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THE FORGOTTEN STORY OF THE *MIZRACHI* JEWS: WILL THE JEWS OF THE MIDDLE EAST EVER BE COMPENSATED FOR THEIR EXPULSION FROM THE ARAB WORLD?

Joseph D. Zargari[†]

Introduction

When people think of the refugee situation in the Middle East, they often think of the Palestinian refugees of the West Bank and Gaza. Their situation has been studied, written about, and debated throughout much of the world. What is often forgotten, however, is the story of another group of refugees in the Middle East that were displaced around the same time as the Palestinian refugees.

Section One of this paper is a historical study of the more than 850,000¹ Jews from Arab lands, who were persecuted and exiled from their countries following World War II² and the 1948 Arab-Israeli war.³ Jews had lived in these lands for millennia,⁴

[†] J.D., University at Buffalo Law School, 2005; B.A., Binghamton University, 2002. This article was inspired by and is dedicated to my grandparents, Yosef and Daliah Zargari, Kurdish Jews who courageously fled from Iran to Israel in 1950. I also wish to thank Nicole Hart and Michael Zargari for their careful review and insightful suggestions and the members of the *Buffalo Public Interest Law Journal* for their editing assistance.

¹ See MAURICE M. ROUMANI, *THE CASE OF THE JEWS FROM ARAB COUNTRIES: A NEGLECTED ISSUE* 2 (1983) (estimating that in 1948 the Jewish population in Arab countries was 856,000); cf. Malka Hillel Shulewitz & Raphael Israeli, *Exchanges of Populations Worldwide: The First World War to the 1990s*, in *THE FORGOTTEN MILLIONS* 139 (Malka Hillel Shulewitz ed., 1999) (stating that there were 900,000 Jews in the Arab world in 1945). It should be noted that neither of these figures include Iranian Jews, as Iran is a Persian, not an Arab, country.

² See NORMAN A. STILLMAN, *THE JEWS OF ARAB LANDS IN MODERN TIMES* 113-39 (1991) [hereinafter STILLMAN, *MODERN TIMES*].

³ See *id.* at 150 (“The first Arab-Israeli war greatly accelerated the process whereby the Jewish minorities in the Arab countries were being alienated and isolated from the larger societies in which they lived.”).

⁴ See Shulewitz & Israeli, *supra* note 1, at 139 (“Many of [the Jewish] communities dated back 2,500 years.”).

often legally discriminated against through relegation to a lower status, as mandated by the Koran,⁵ until life became truly unbearable in the late 1940s with the establishment of the State of Israel and the resulting Arab anti-Semitism. Since 1948, almost all of these Jews have left the Arab world and 600,000 of them have immigrated to Israel, with 300,000 arriving in a three year span between 1949 and 1951.⁶ In present day dollars, it has been estimated that the value of the Jewish property left behind and stolen by Arab governments ranges from \$8 billion to \$30 billion.⁷ By providing the historical bases for compensation claims from Middle Eastern Jewry, Section One will examine the following questions. Why did the Arab governments persecute Jews? Why did Jews flee the Arab world when they did? On what historical bases may these Jews pin their hopes of reparations?

Section Two presents a legal analysis of the Jewish refugee situation. Recently, there has been an effort on behalf of grassroots Jewish organizations and the Israeli government to seek compensation for the confiscated property and lost assets of the Jewish refugees. Current events, such as the overthrowing of the Ba'ath party in Iraq, and other factors, including the age of the

⁵ See BERNARD LEWIS, *THE JEWS OF ISLAM* 21 (1984):

In Muslim law and practice, the relationship between the Muslim state and the subject non-Muslim communities . . . was regulated by a pact called *dhimma* . . . By the terms of the *dhimma*, these communities were accorded a certain status, provided that they unequivocally recognized the primacy of Islam and the supremacy of Muslims. This recognition was expressed in the payment of the poll tax and obedience to a series of restrictions defined in detail by the holy law.

⁶ See Yehuda Dominitz, *Immigration and Absorption of Jews from Arab Countries*, in *THE FORGOTTEN MILLIONS*, *supra* note 1, at 155; see also ROUMANI, *supra* note 1, at 3-4 (estimating that 586,070 Jews emigrated from Arab lands to Israel from May 15, 1948 to May 22, 1972, with at least another 200,000 Jews going to France, England and the Americas).

⁷ See Israel Ministry of Foreign Affairs, *Israel Line: Justice Ministry Expanding Claims Registry for Jewish Property in Arab Countries* (June 10, 2003), available at <http://mfa.gov.il/mfa/go.asp?MFAH0nge0> [hereinafter Israel Ministry of Foreign Affairs, *Israel Line*] (referring to a report by *GLOBES*, an Israeli financial newspaper, as to the estimated property value).

former refugees, have given hope and a new sense of urgency to the campaign for compensation. Yet, can compensation ever happen in the current political landscape of the Middle East? What legal remedies are available? Will any of them realistically work? This section will discuss a new department in Israel's Justice Ministry that registers claims and advocates for compensation. It will conclude with an analysis of the legal bases and remedies for refugees and the effectiveness of each.

Section Three begins with the premise that there will be no compensation or reparation for the Jewish refugees without a comprehensive regional peace agreement between Israel and its Arab neighbors. Such an agreement, however, can only be realized within the framework of a solution to the Palestinian-Israeli conflict. The obstacles to such a solution are numerous and seemingly impenetrable. Nevertheless, this Comment identifies the major barriers to peace in the region and attempts to find remedies for each. Such a discussion of peace may seem overly optimistic given the current state of affairs in the Middle East, but it is necessary in order to conduct a complete analysis of the likelihood of compensation. However, pessimism may finally prevail, as peace is unlikely to occur any time soon and the remaining refugees will be long gone before any justice is served.

SECTION I: HISTORICAL ANALYSIS OF JEWS IN THE MIDDLE EAST

A. The Jew as the *Dhimmi*: The Influence of Shari'ah on Arab Anti-Semitism

Shari'ah, or Islamic law, distinguishes between religions that are based on revealed scripture (Judaism, Christianity, and Zoroastrianism) and religions that are not.⁸ "Islamic law grant[s]

⁸ See Donna E. Arzt, *The Role of Compulsion in Islamic Conversion: Jihad, Dhimma and Ridda*, 8 BUFF. HUM. RTS. L. REV. 15, 25 (2002).

the protected status of *dhimma* (contract or guarantee) to communities of the other scriptural monotheisms.”⁹ Prior to the Middle Ages, *dhimmis*, as members of these religions were called, were free to practice their religion and were afforded a limited amount of tolerance as their monotheistic faiths were seen as embryonic versions of Islam.¹⁰ The tolerance and protection afforded to the *dhimmis* as a minority population was an innovation of Islam. Whereas Christianity greatly limited and often prohibited an individual’s ability to follow another religion, Islam allowed a greater degree of religious freedom and pluralism, albeit on the condition that Islam would be the dominant religion in the country.¹¹

Despite the limited protections of religious freedom, *dhimmis* had a duty to recognize the primacy of Islam and the supremacy of Muslims by paying a poll tax and obeying a series of restrictions defined by the Koran.¹² The poll tax, or the *jizya*, was

⁹ *Id.* See generally BAT YE’OR, ISLAM AND DHIMMITUDE: WHERE CIVILIZATIONS COLLIDE (2002) (analyzing the status of Jews and Christians as *dhimmis* in the Islamic world).

¹⁰ See Arzt, *supra* note 8, at 25-26.

¹¹ See LEWIS, *supra* note 5, at 18-19.

Apart from one episode, of brief duration and minor significance, the Arab Muslim rulers of the new empire did not repeat the errors of their predecessors [Christians, Zoroastrians] but instead respected the pattern of pluralism that had existed [in the Middle East] since antiquity. This pattern was not one of equality, but rather of dominance by one group and, usually, a hierarchic sequence of the others. Though this order did not concede equality, it permitted peaceful coexistence.

Id. at 19.

¹² See *id.* at 21; see also Arzt, *supra* note 8, at 27. According to the Charter of Umar:

Dhimmis could not hold political or judicial office outside their local community structure and could not testify in litigation involving Muslims. They could not marry Muslim women and were forbidden to carry arms, to ride horses or mules, to walk in the middle of the street, to sell their books or religious articles in marketplaces, to raise their voices during worship, or to build churches or synagogues, tombs or houses higher than those of Muslims. *Dhimmis* were also required to wear distinctive clothing

a “symbolic expression of subordination,”¹³ and the failure to respect Muslims could lead to intolerance, severe reprisals, or even death.¹⁴ When persecution of Jews occurred, which was rare until the nineteenth and twentieth centuries,¹⁵ it was often justified by appealing to the Holy Law.¹⁶ It was argued that when Jews broke the contract of the *dhimma* by their perceived disrespect for Islam, Muslims were no longer bound by their contractual obligations to refrain from hurting, killing and expropriating Jews.¹⁷ In sum,

and hair styles, which set them apart from Muslims, and to stand in the presence of Muslims . . . Moreover, if the People of the Book refused the *dhimma* compact, they had only the choice of death or conversion to Islam – either before or after their defeat in war.

Id.; NORMAN A. STILLMAN, *THE JEWS OF ARAB LANDS: A HISTORY AND SOURCE BOOK* 157-58 (1979) [hereinafter STILLMAN, *SOURCE BOOK*] (stating that according to the Charter of Umar, if the Jews broke any of its conditions, then they will no longer be protected as *dhimmis* and “shall be liable to the penalties for rebelliousness and sedition.”).

¹³ LEWIS, *supra* note 5, at 14; see also Bat Ye’or, *The Dhimmi Factor in the Exodus of Jews from Arab Countries*, in *THE FORGOTTEN MILLIONS*, *supra* note 1, at 36 (“The first ‘right’ is the right to life which was conceded on the payment of the *jizya* (Koran IX, 29). Life is not considered a natural right. It is a right which each Jew and Christian must repurchase annually by paying the poll tax with humility to the *umma*. Only then are their lives ‘protected.’”).

¹⁴ See LEWIS, *supra* note 5, at 39.

¹⁵ See *id.* at 46.

¹⁶ See *id.* at 44.

¹⁷ See *id.* at 45. In a 1066 poem, jurist Abu Ishaq argued that it was legal to rob and kill Jews because “[i]t is the Jews . . . who have violated the [*dhimma*] contract that has, therefore, ceased to be binding on the Muslims. The Muslims and their rulers are absolved from their obligations under *dhimma* and are thus free to attack, kill, and expropriate the Jews without illegality, that is, without sin.” *Id.* See also Bat Ye’or, *supra* note 13, at 36-37.

Usually the refusal to pay the *jizya* is considered by all jurists as a rupture of the *dhimma*, which automatically restitutes to the *umma* its initial rights of war – to kill and to dispossess the *dhimmi* because he has returned to his former status of being a *harbi*, an unsubjected infidel . . . Protection is abolished if the *dhimmis* rebel against Islamic law, give allegiance to a non-Muslim power,

Jews were only able to coexist with Muslims by submitting to them and by recognizing their own second-class status.¹⁸

B. European Influence on the Modern Rise of Arab Anti-Semitism

While Jews often experienced periods of relative calm and coexistence with their Muslim neighbors, the social situation of Jews in the Arab world declined after the Middle Ages.¹⁹ The Shari'ah and the law of *dhimma* permitted legal discrimination against Jews, resulting in a culture that turned Jews into scapegoats and made them vulnerable to mob actions.²⁰ Starting in the 1800s, Jews found themselves "exposed to active hostility" for the first time in centuries.²¹ "From the late eighteenth century through the nineteenth century, expulsion, outbreaks of mob violence, and even massacres became increasingly frequent."²² One of the major

refuse to pay the *jizya*, entice a Muslim from his faith, harm a Muslim or his property, or commit blasphemy . . . The moment the 'pact of protection' is abolished the *jihad* resumes, which means that the lives of the *dhimmis* and their property are forfeited.

¹⁸ See Carole Basri, *The Jewish Refugees from Arab Countries: An Examination of Legal Rights – A Case Study of the Human Rights Violations of Iraqi Jews*, 26 *FORDHAM INT'L L.J.* 656, 660-61 (2003).

¹⁹ See STILLMAN, *SOURCE BOOK*, *supra* note 12, at 109.

During periods of economic, political, and social stability, the interpretation and application [of the social system of the *dhimmi*] tended to be more liberal. Conversely, in times of stress they tended to be harsher and more restrictive. However, as in any society based upon the defined superiority of one group and inferiority of another, the seeds were sown for the eventual debasement and abuse of the inferior group . . . [T]he later Islamic Middle Ages, which continued well into the nineteenth century in much of the Arab world, was marked by a general decline of the non-Muslim population and its progressive degradation. There were exceptions to this trend . . . [b]ut the overall trend was one of definite social decline. *Id.*

²⁰ See Basri, *supra* note 18, at 662.

²¹ LEWIS *supra* note 5, at 168.

²² *Id.*

factors for the deterioration of the Jewish condition in the Middle East was the decline in Islamic power and influence as a result of European imperialism.²³ "Loss of power led to loss of confidence, and this in turn [led] to a loss of tolerance [for Jews]."²⁴ While Christians were the major threat to Islam at this time, Jews were the easiest targets for Muslim hostility, as their small population and lack of protection from outside powers prohibited them from adequately defending themselves.²⁵

Whereas Muslim intolerance towards Jews had its roots in the *dhimma* relationship, from the late 1800s onwards, Muslim anti-Semitism was directly influenced by European attitudes towards Jews.²⁶ Muslims felt the *dhimma* relationship had been subverted once the Christian European powers gained a foothold in the Arab world.²⁷ To Muslims, the Christian *dhimmis* were now in a position of power that would never have happened in the old Muslim order.²⁸ Once Muslims felt that the *dhimma* relationship had been violated by the newfound power of Christians, they were no longer obligated to tolerate Christianity or Judaism, as the contractual bond of the *dhimma* had been broken.²⁹ When the *dhimma* relationship ceased, Muslims were no longer required to protect religious minorities. The European presence in the Middle

²³ See *id.* at 170.

²⁴ *Id.*

²⁵ *Id.*; see also BENNY MORRIS, *RIGHTEOUS VICTIMS: A HISTORY OF THE ARAB-ISRAELI CONFLICT* 10 (1999).

Christian minorities in Dar al Islam [literally, the House of Islam, but here signifying the Muslim world] came under the protection of the European powers and were often shielded from Muslim hostility by the Ottoman authorities, who either feared retaliation or needed European financial and political aid. The Jews, lacking these connections, increasingly fell prey to grassroots hostility.

Id.

²⁶ See LEWIS, *supra* note 5, at 184.

²⁷ *Id.* at 185.

²⁸ *Id.*

²⁹ *Id.*

East, combined with the decline of the *dhimma* relationship, caused European anti-Semitism³⁰ to creep into the psyche of the Muslim world.³¹ One such instance was when the European blood libel, the belief that Jews sacrificed Christian children, appeared in the Arab world.³² The most notable blood libel was the Damascus Affair of 1840, where Jews were accused of murdering two men to obtain their blood for Passover.³³ Sixty-three Jewish children were taken hostage, leaders of the Jewish community were arrested and tortured, and mob violence ensued.³⁴ Similarly, the *Protocols of the Elders of Zion*, a European book that fantasized about Jewish conspiracies to take over the world, appeared in the Middle East in the 1920s and quickly spread throughout the region, further inflaming the negative attitudes toward Jews.³⁵

Starting in the early 1900s and reaching its apex with the Nazis in the 1930s, European groups "devoted great efforts to the spread of anti-Semitic doctrines among the Arabs."³⁶ For example, in Iraq, the German Charge d'Affaires published sections of *Mein Kampf* in the Arabic newspaper and a 1939 educational curriculum "praised Hitler for his steps toward eradicating Jews and taught all school children that the Jewish community of Iraq was an enemy from within"³⁷ One reason that such Nazi propaganda was accepted throughout the Middle East was that the Arab and the Nazis shared a common enemy: the British and French imperialists who ruled much of the Arab world.³⁸ The Arabs saw a potential

³⁰ Whereas Islamic discrimination against Jews had been based on the statutory religious principles of the *dhimma*, European discrimination had no such foundations. European anti-Semitism typically portrayed Jews as members of a conspiracy for global domination and as threats toward Christians.

³¹ See LEWIS, *supra* note 5, at 185.

³² See STILLMAN, SOURCE BOOK, *supra* note 12, at 105.

³³ See *id.*

³⁴ See *id.*

³⁵ See LEWIS, *supra* note 5, at 185.

³⁶ *Id.* at 188.

³⁷ See Basri, *supra* note 18, at 670; see also STILLMAN, MODERN TIMES, *supra* note 2, at 116-17 ("[T]he Jews were regarded by much of the population as a fifth column.").

³⁸ See STILLMAN, MODERN TIMES, *supra* note 2, at 93-94.

benefit to its alignment with the Axis powers, as they had mutual enemies in the British and French.³⁹ However, another, more important, reason for the attractiveness of Nazi anti-Semitism and the Arab world's willingness to follow it came from the conflict between Zionism and Palestinian nationalism.⁴⁰

C. Zionism and the Resulting Arab Anti-Semitism

Zionism is the movement to establish a Jewish state in the Land of Israel. Traditionally, Zionism was "rooted in age-old millenarian impulses and values of Jewish tradition and the flourishing nationalist ideologies of nineteenth-century Europe."⁴¹ However, Modern Zionism was influenced primarily by European anti-Semitism. Because Jews could never fully assimilate into the Christian world, the only place Jews could find safety and freedom from their status as oppressed minorities would be in their own land.⁴² As Theodor Herzl, the founder of Modern Zionism, noted about European attitudes towards Jews:

After brief periods of toleration, their hostility erupts again and again. When we prosper, it seems to be unbearably irritating, for the world has for many centuries been accustomed to regarding us as the most

³⁹ *See id.*

⁴⁰ *See id.* at 94; *see also* LEWIS, *supra* note 5, at 189.

Obviously, a major element in the rise of Arab anti-Semitism is the Palestine question, and the consequent embitterment of relations between Jews and Arabs everywhere...[S]ince Zionism and later Israel both happen to be predominantly Jewish, and since there was conveniently accessible Jewish minorities in Arab countries, and since furthermore anti-Semitism provided a ready-made system of themes, images, and vocabulary for attacks on Jews, the temptation was obviously very strong to make use of them.

Id.

⁴¹ MORRIS, *supra* note 25, at 14.

⁴² *See id.* at 20-21.

degraded of the poor.... Affliction binds us together, and thus united, we suddenly discover our strength. Yes, we are strong enough to form a State, and, indeed a model State.⁴³

Hence, the European anti-Semitism that influenced Arab anti-Semitism also contributed to the growth of Zionism from a dream into a reality. The emergence of Zionism, in turn, led to a Palestinian national movement that over time increased anti-Semitism throughout the Arab world.

The conflict between the Palestinians and the Israelis arose over a seemingly inevitable problem: two groups of people were each claiming the same land as their own.⁴⁴ Despite the fact that there had been an uninterrupted Jewish presence in the area for millennia,⁴⁵ Palestinian antagonism toward the Zionists stemmed from the fear of territorial displacement, the threat of a foreign culture and religion, and the perception of European penetration into the Middle East.⁴⁶ Whether this threat was justified or not is a matter of contention. The important point is that the Palestinian Arabs were opposed to the Zionist movement and, as a result, hostilities erupted between the two sides.

The Palestinian national movement, however, evoked little interest in the Arab world before 1929.⁴⁷ In August of that year, Palestinian leaders falsely asserted that Jews had been trying to

⁴³ Theodor Herzl, *The Jewish State*, in *THE ZIONIST IDEA: A HISTORICAL ANALYSIS AND READER* 220 (Arthur Hertzberg ed., 1997).

⁴⁴ See LEWIS, *supra* note 5, at 189.

⁴⁵ See Eyal Benvenisti & Eyal Zamir, *Private Claims to Property Rights in the Future Israel-Palestinian Settlement*, 89 AM. J. INT'L L. 295, 298 (1995) ("Long before the Zionist immigration of the twentieth century, there was a small Jewish population in Palestine, Eretz Yisrael, mainly in Jerusalem, Hebron, Tiberias and Safad . . . However, the bulk of the lands owned by Jews in Palestine prior to 1948 was purchased in the twentieth century as part of the Zionist effort to prepare for the massive Jewish emigration from the diaspora."). Hence, the newfound Palestinian objection to the Jewish presence in the area probably surfaced because the Jewish population in Palestine, while always there, was sure to increase and had the potential to displace Palestinian Arabs.

⁴⁶ See MORRIS, *supra* note 25, at 37, 45.

⁴⁷ See STILLMAN, *MODERN TIMES*, *supra* note 2, at 94.

destroy Muslim holy sites.⁴⁸ Shortly thereafter, an Arab riot at the Western Wall in Jerusalem resulted in the deaths of 129 Jewish worshippers.⁴⁹ When news of this supposed “Zionist plot” reached the Arab world, mass protests with an overtly anti-Semitic tone erupted throughout the Middle East.⁵⁰ The rising tide of Pan-Arabism⁵¹ reinforced Muslim solidarity with the Palestinians and, as a corollary, Zionism became the enemy of the Arab world.⁵² As Arabs became increasingly anti-Zionist, it became more difficult for the leaders or the population at large to differentiate between Jews and Zionists.⁵³ Hence, their anti-Zionism turned to anti-Semitism, which in turn was directed at their Jewish neighbors.

Unlike the Arab Muslims who, by and large, identified with the Palestinian national movement, the Jews of the Middle East were generally apathetic towards the Zionist enterprise in the 1930s, especially when they felt that support for Zionism would be dangerous.⁵⁴ Where Jews were financially and numerically strong, as was the case in Iraq, they distanced themselves from Zionism,⁵⁵ perhaps because they did not want their vibrant communities and

⁴⁸ See *id.*; see also MORRIS, *supra* note 25, at 112 (“The contention that the Jews were bent on taking over the [Temple Mount] compound, destroying the Islamic structures, and rebuilding the Temple had long been a theme in Arab propaganda.”).

⁴⁹ See STILLMAN, MODERN TIMES, *supra* note 2, at 93-94. During this riot, over 100 Arab were killed by British troops and local police. See *id.*

⁵⁰ See *id.*

⁵¹ Pan-Arabism was the Arab nationalist movement that sought to replace Turkish dominance over the Middle East, in the form of the Ottoman Empire, with Arab dominance. See MORRIS, *supra* note 25, at 26-32.

⁵² See STILLMAN, MODERN TIMES, *supra* note 2, at 95-98.

⁵³ See *id.* at 180.

⁵⁴ See *id.* at 98-99. These trends where Jewish communities would publicly demonstrate or refrain from demonstrations regarding Zionism mirrored Jewish attitudes towards Nazi persecution, as well organized Jews that lived in Arab countries, like Egypt, demonstrated against Nazi anti-Semitism, whereas poor or lesser-organized Jews in Syria and Lebanon felt that “overt communal demonstrations [against Nazism] would be disastrous.” *Id.* at 108-09.

⁵⁵ See *id.* at 98.

lifestyles to be disrupted by accusations that they, as Jews, were connected with the Zionist movement. For instance, Rabbi Sassoon Khadduri, the leader of the Jewish community in Baghdad, publicly disassociated Iraqi Jewry from Zionism after several Jews were killed and attacked by anti-Zionist Muslims.⁵⁶ Leaders of the Iraqi Jewish community did not view Zionism as a solution to their problems since “they were still convinced that identification with the Zionist enterprise in the Land of Israel would serve only to heighten the threat to their community.”⁵⁷ Similarly, in countries like Syria, where the Jewish population was small and poor, Jews asserted their anti-Zionist stance out of intimidation.⁵⁸ However, in other places, such as Morocco and Tunisia, Jews felt relatively safe and therefore publicly supported Zionism and its goals.⁵⁹ Nevertheless, these incidents in Morocco and Tunisia were the exceptions, not the rule. The general trend was that the majority of Jews in the Arab world were not ardent supporters of Zionists.⁶⁰

Despite their apathy towards Zionism, during the 1930s, the Jews of the Middle East saw a steady deterioration of their position and a steady increase in their persecution.⁶¹ Zionism, Nazi anti-Semitism, European imperialism and the consequent shattering of the *dhimma* were all factors in the rise of Arab anger towards Jews during this decade. However, it was the next decade that witnessed a complete destruction of Jewish life in Arab lands.⁶²

D. World War II, Arab Nationalism, and the Riots that Followed

World War II was a pivotal and dangerous time for Jews

⁵⁶ See *id.* at 102.

⁵⁷ ITAMAR LEVIN, LOCKED DOORS: THE SEIZURE OF JEWISH PROPERTY IN ARAB COUNTRIES 6 (Rachel Neiman trans., 2001).

⁵⁸ See STILLMAN, MODERN TIMES, *supra* note 2, at 98.

⁵⁹ See *id.* at 99.

⁶⁰ See *id.* at 138.

⁶¹ See *id.* at 112.

⁶² See *id.*

around the world; and Jews of the Middle East were no exception.⁶³ “[M]any Arab nationalists admired German and Italian militarism, and there was widespread sympathy among Arabs for the Axis, which was the enemy of colonialist Britain and France.”⁶⁴ As a result, Jews in the Middle East often faced legal and cultural discrimination and persecution from their Arab neighbors. In Iraq, after a military coup deposed the pro-British government, Jews were seen as allies of the British, and hence were considered a “fifth column.”⁶⁵ Yet, the British failed to intervene on behalf of the Jews in 1941, when a massive Arab riot, known as the Farhūd, resulted in the looting of 586 Jewish businesses, the pillaging of 911 Jewish homes, the killing of 179 Jews and the orphaning of 242 children.⁶⁶ Similarly, in North Africa, where Tunisian Jews were under Nazi control and Algerian Jews were under Vichy control, anti-Jewish laws were passed, and Jews were placed into forced-labor camps. Extortion, mob attacks, and physical abuse against Jews became commonplace.⁶⁷

The Jews of the Middle East were transformed by the events that occurred in their countries during World War II. Most importantly, Jews became more receptive towards Zionism, realizing that Europeans would no longer protect them and the Arabs no longer tolerated them.⁶⁸ As historian Bernard Lewis notes, “Jews in Arab countries had, for the most part, been either indifferent or hostile to Zionism, which was seen as a

⁶³ See STILLMAN, *MODERN TIMES*, *supra* note 2, at 113.

⁶⁴ *Id.*

⁶⁵ *Id.* at 116-17.

⁶⁶ See *id.* at 119; see also Basri, *supra* note 18, at 672 (“As news of the attack began to spread, a mob of thousands sprung up and was spurred on by active participation of the police. The mob killed any Jew they encountered, dragging Jews from buses, taxis and homes. Jewish women were raped repeatedly and then killed.”).

⁶⁷ See STILLMAN, *MODERN TIMES*, *supra* note 2, at 121-36, 180 (“World War II demonstrated to the Jews of Arabs lands with painful clarity just how vulnerable they were.”).

⁶⁸ See *id.* at 136-39.

predominantly European movement. The conversion of Arab Jews to Zionism was . . . a direct result of persecution."⁶⁹ Hence, the fate of the Middle Eastern Jews would now be linked to the fate of worldwide Jewry, with whom they shared a common destiny of anti-Semitism and discrimination.⁷⁰

The years following World War II were especially difficult for Jews of the Arab world. With the end of the war came a renewed interest in Arab nationalism and anti-Zionism, which consequently led to anti-Semitism.⁷¹ "Between 1941 and 1948 there were numerous outbreaks of anti-Jewish violence in Iraq, Syria, Egypt, Southern Arabia, and North Africa, in which hundreds of Jews were killed or injured, while far greater numbers found their work places sacked and their houses destroyed, leaving them homeless and destitute."⁷² In Libya, for instance, Arab nationalists tried to gain legitimacy for their aspirations of Libyan independence by directing old and new popular resentment against Jews, who were already easy targets because of the situation in Palestine and their ties with the British colonialists.⁷³ Therefore, in 1945, Libyan Jewry witnessed particularly cruel pogroms whereby 125 Jews were killed, 92 children were orphaned, 159 were hospitalized, numerous women were raped and many Jews were compelled to convert to Islam.⁷⁴ In Syria, similar riots erupted in 1945 and 1947, resulting in the denial of basic rights to Jews, restrictions on immigration to Israel, destruction of Jewish property and the freezing of Jewish bank accounts.⁷⁵ In Aden (located in present-day Yemen), Arabs rioted in 1947 in protest of the United Nations partition plan of Palestine into Arab and Jewish sections.⁷⁶ In its aftermath, the Great Synagogue of Aden was

⁶⁹ LEWIS, *supra* note 5, at 189-90.

⁷⁰ See STILLMAN, MODERN TIMES, *supra* note 2, at 136-39.

⁷¹ See *id.* at 141-48.

⁷² LEWIS, *supra* note 5, at 190.

⁷³ See RENZO DE FELICE, JEWS IN AN ARAB LAND 191 (Judith Roumani trans., 1985).

⁷⁴ See *id.* at 192-95.

⁷⁵ See ROUMANI, *supra* note 1, at 7.

⁷⁶ See *id.* at 8.

destroyed and 100 Jews were killed.⁷⁷

E. The 1948 Arab Israeli War: The Beginning of the End for Middle Eastern Jewry

The 1948 Arab-Israeli War was the proverbial “straw that broke the camel’s back” as it was the catalyst for the mass exodus of Jews from Arab countries.⁷⁸ However, it was not the sole cause of the exodus. The culture of discrimination, as promoted by Islamic law (the *dhimma*), Arab nationalism, and European anti-Semitism, was a major reason why the Jews of the Middle East became refugees. This culture of discrimination came to a fore in the 1940s, when Jews were increasingly alienated as their societies turned to Arab nationalism, which had a strong ethnic (Arab) and religious (Islamic) nature.⁷⁹ This Arab nationalism linked the Jews of the Arab world with the Zionists and viewed both as enemies. Therefore, once the State of Israel was established, the position of Middle Eastern Jewry was so weakened that it exposed them to “a new militancy that [left] no place for those who deviate[d] from the rule.”⁸⁰ Hence, the conditions necessary for the mass exodus of Jews from the Arab world were already present by 1948. The Arab-Israeli War simply “accelerated the process whereby the Jewish minorities in the Arab countries were being alienated and isolated from the larger societies in which they lived.”⁸¹

Once the 1948 War began to turn in Israel’s favor, “incidents of anti-Jewish violence began to break out in the Arab countries,”⁸² and these incidents ultimately led to the mass exodus of Jews. In June of 1948 alone, 42 Moroccan Jews were killed, rioters killed 13 or 14 in Libya, a bomb in Egypt killed 20, and property damage

⁷⁷ *See id.*

⁷⁸ STILLMAN, MODERN TIMES, *supra* note 2, at 149.

⁷⁹ *See id.*

⁸⁰ LEWIS, *supra* note 5, at 190.

⁸¹ STILLMAN, MODERN TIMES, *supra* note 2, at 150.

⁸² *Id.* at 152.

escalated.⁸³ Violence continued throughout the summer and the rest of the year, resulting in more deaths, more arrests of Jews, more discriminatory laws and more property damage.⁸⁴ In a December 2003 speech to the United Nations, Ambassador Dan Gillerman of Israel gave the following account of the effects the first Arab-Israeli War had on Middle Eastern Jewry:

While the history of the 20th century reveals a consistent, widespread pattern of state-sanctioned discrimination, antisemitism [sic] and persecution of Jewish minorities by Arab regimes, upon the declaration of the State of Israel in 1948, the status of Jews in Arab countries changed dramatically for the worse. As virtually all Arab countries declared war, or backed the war against Israel, Jews were either uprooted from their countries of residence or became subjugated, political hostages of the Arab-Israeli conflict. In virtually all cases, as Jews were forced to flee, individual and communal properties were seized and/or confiscated without any compensation provided by the Arab governments involved, in clear violation of international human rights norms.⁸⁵

As Ambassador Gillerman noted, the persecution that Jews suffered in the immediate aftermath of the 1948 Arab-Israeli War

⁸³ See *id.*

⁸⁴ See *id.* at 152-54. For example, Iraq court-martialed 310 Jews during the early days of the War, its government removed Jews from public life, Jewish students were prohibited from studying in high schools or universities, Jews were forced to pay for the Iraqi war effort against Israel, Jews were restricted from buying and selling property, and Jews could not travel abroad. The effects of these laws were to prohibit Jewish emigration. See Basri, *supra* note 18, at 675-78.

⁸⁵ Israel Ministry of Foreign Affairs, *Statement by Ambassador Dan Gillerman, Permanent Representative of Israel to the United Nations, on Agenda Item 37: The Situation in the Middle East* (Dec. 2, 2003), available at <http://mfa.gov.il/mfa/go.asp?MFAH0o1m0> [hereinafter Israel Ministry of Foreign Affairs, *Statement by Ambassador Dan Gillerman*] (copy on file with the author).

was the final push in their mass exodus from their homelands. The Jewish exodus from the Arab world came in two stages. The first stage, from 1949 to 1951, witnessed 300,000 Jews immigrate to Israel.⁸⁶ Continued persecution, messianic enthusiasm after the establishment of Israel and the easing of travel restrictions to Israel led to the mass exodus of virtually every Libyan, Iraqi, Syrian and Yemeni Jew by the early 1950s.⁸⁷ By 1951, the nascent State of Israel absorbed 300,000 of these Jews, many in dramatic round-the-clock airlifts.⁸⁸ “[A]fter a few years there were no Jews left in

⁸⁶ See *supra* note 6.

⁸⁷ See STILLMAN, MODERN TIMES, *supra* note 2, at 155-68. The *New York Times* gave this account of the fate of Iraqi Jewry:

While the number of Jews in Iraq has dwindled to near extinction, they used to make up one of the oldest and most storied communities in the Diaspora. Many traced their origins to the sixth century B.C. and the release, by Cyrus the Great, of the Jews held captive in Babylon. By 1948, the year of Israel's independence, the Jews of Baghdad numbered nearly 120,000. The trouble for Iraq's Jews began in the 1930's with the end of the British Mandate, when successive Iraqi governments embarked on discriminatory policies against them. With Israel's independence, the Iraqi government at first discouraged and finally allowed the Jews to emigrate, and in 1950 enacted a law requiring that any Jews leaving for Israel renounce their citizenship. By the early 1950's, all but a few thousand of Iraq's Jews had fled. Many of those who remained left after 1969, when a dozen men, seven of them Jews, were hanged from lampposts in Liberation Square in Baghdad on charges of treason. Saddam Hussein, then a senior Baath Party member, toured the scene. Today, the Jewish community in Iraq has dwindled to just 13 members. The old Jewish neighborhoods along the Tigris River have long since been bulldozed. An estimated 250,000 to 400,000 Iraqi natives and their descendants now live in Israel, with 40,000 more elsewhere, primarily in North America, Britain and Australia.

Dexter Filkins, *The Struggle for Iraq: Repatriation: Iraqi Council Weighs Return of Jews, Rejecting It So Far*, N.Y. TIMES, Feb. 28, 2004, at A6.

⁸⁸ See Dominitz, *supra* note 6, at 155. See generally STILLMAN, MODERN TIMES, *supra* note 2, at 155-68 (describing the exodus of the Jews and the air lifts).

Libya, fewer than 500 remained in Iraq, and about 1,000 stayed in Yemen.”⁸⁹ An additional 80,000 Jews fled other Asian countries, like Iran.⁹⁰ While Jews were not formally expelled, their exodus cannot be termed “voluntary” as Jews would have had to face continuing humiliation, violence, imprisonment and executions had they stayed.⁹¹ Their “choice” to leave was not much of a choice. The second exodus of Jews from Arab lands was slower than the first, yet it resulted in virtually the same thing – the flight of entire Jewish communities from their homelands. During this exodus, it was the Jews of North Africa (Egypt, Morocco, Tunisia, and Algeria) who left.⁹² In the months following the 1956 War, in which Great Britain, France, and Israel attacked Egypt for nationalizing the Suez Canal, continued legal discrimination against Jews (Jews were declared enemies of the state), the freezing of Jewish bank accounts, and the criminalization of Zionism led to the mass flight of Egyptian Jewry.⁹³ Moroccan and

⁸⁹ Dominitz, *supra* note 6, at 164.

⁹⁰ See *id.* at 157.

⁹¹ See Arthur J. Goldberg, *Findings of the Tribunal Relating to the Claims of Jews from Arab Lands*, in THE FORGOTTEN MILLIONS, *supra* note 1, at 208. Arab governments have neglected the fact that the exodus was a result of persecution and ill treatment of Jews. They have frequently made the claim that Jews should not be compensated because their choice to leave was voluntarily. See Press Release, *Fourth Committee Concludes Debate on UN Relief Agency for Palestine Refugees; Deteriorating Middle East Situation, Agency's Financial Problems Highlighted*, U.N. GAOR 4th Comm., 57th Sess., U.N. Doc. GA/SPD/252 (May 11, 2002), available at <http://www.un.org/News/Press/docs/2002/gaspd252.doc.htm>:

Speaking in the exercise of the right of reply, the representative of Lebanon quoted from the statement of the Israeli delegate, who had said that ‘hundreds of thousands’ of Jews had been forced to flee Arab lands where they had lived for centuries. Through such statements, the Israeli delegate had said that the Arabs had forced Jews to flee the Arab countries. Through such statements, the Israeli delegate was trying to justify the displacement of the Palestinians. He rejected Israel's unfounded claim. The Jews who had left Arab countries had left by choice.

⁹² See Dominitz, *supra* note 6, at 164.

⁹³ See STILLMAN, MODERN TIMES, *supra* note 2, at 169; see also Samuel G. Freedman, *Are Jews Who Fled Arab Lands to Israel Refugees, Too?*, N.Y.

Tunisian independence caused Jews to fear for their fate, as both countries became members of the Arab League and were pressured to join the anti-Jewish and anti-Israel Arab chorus.⁹⁴ In Algeria, Jews, along with many French Algerians, fled upon independence, as an Algerian Arab government was formed.⁹⁵ After Israel decisively defeated Egypt, Syria and Jordan in the 1967 Six-Day War, more Jews fled Arab countries, as there was renewed hostility, incitement, economic boycotts, and infringements on the civil rights of Jews.⁹⁶ More than 800,000 Jews fled the Arab world in the decades following the 1948 Arab-Israeli War, with over 300,000 leaving in the first exodus between 1948 and 1951.⁹⁷ Israel absorbed over 600,000, or three-fourths, of the total amount.⁹⁸ As of 2003, barely 14,000 Jews were left in the Arab

TIMES, Oct. 11, 2003, at B11 ("After the overthrow of King Farouk in Egypt in a military coup in 1952 and Israel's invasion of Sinai in 1956, Egypt declared Jews enemies of the state.").

⁹⁴ See Dominitz, *supra* note 6, at 164; see also STILLMAN, MODERN TIMES, *supra* note 2, at 173:

The natural progression in both countries toward increased identification with the rest of the Arab world (first Morocco, then Tunisia, entered the Arab League in 1958) only widened the gulf between Muslims and Jews. Furthermore, government steps to reduce Jewish communal autonomy, such as Tunisian Law No. 58-78 of July 11, 1958, which dissolved the Jewish Communal Council of Tunis and replaced it with the Provisional Commission for the Oversight of Jewish Religious Matters, having far more circumscribed authority, had negative psychological consequences for Jews, who saw their traditional structures under siege. The official pressure on Jewish educational institutions for arabization [sic] and cultural conformity only succeeded in feeding the Jews' worst fears, rather than fostering their integration.

⁹⁵ See Dominitz, *supra* note 6, at 164 (noting that the whole Algerian Jewish community left, but most went to France, as they still considered themselves to be French); see also STILLMAN, MODERN TIMES, *supra* note 2, at 173.

⁹⁶ See Dominitz, *supra* note 6, at 164-65.

⁹⁷ See *id.* at 155.

⁹⁸ See *id.*

world, as the following chart illustrates:

Comparisons of Jewish Populations in the Arab World: 1948, 1976 and 2003⁹⁹			
	1948	1976	2003
Morocco	265,000	17,000	5,800
Algeria	140,000	500	0
Tunisia	105,000	2,000	2,000
Libya	38,000	20	Less than 10
Egypt	75,000	100	200
Iraq	135,000	400	Less than 100
Syria	30,000	4,350	4,000
Lebanon	5,000	500	60
Yemen	55,000	1,000	2,000
Aden	8,000	0	0
Total	856,000	25,870	14,170

When Jews fled their native Arab countries, they were often prevented from taking their assets or property across borders. In May 2003, Representative Frank Pallone of New Jersey made this statement on the floor of the House regarding the issue of confiscation of Jewish property:

Jews in Arab nations were forced to forfeit the lives they had worked so hard to achieve – to abandon their homes and livelihoods. They had to turn their backs on centuries of Jewish history, culture and community. They had to leave behind schools, synagogues, hospitals and businesses – all without compensation

⁹⁹ See STILLMAN, MODERN TIMES, *supra* note 2, at 177 (listing populations of Jews in Arab countries); *see also* ROUMANI, *supra* note 1, at 2 (listing the population of Jews in 1948 and 1976); Joint Statement of the Int'l Ass'n of Jewish Lawyers and Jurists and the World Jewish Congress, *Rights of Refugees to Compensation and/or Restitution of Property*, 36 JUSTICE 7 (Autumn 2003), available at http://www.intjewishlawyers.org/pdf/JUSTICE_36.pdf (last accessed Jan. 14, 2004) (listing populations of Jews in the Arab world in 2003).

and all confiscated by the various Arab governments.¹⁰⁰

The Israeli financial newspaper, *GLOBES*, reported that the private property owned by Iraqi, Egyptian and Syrian Jews was worth at least \$10 billion and possibly as much as \$30 billion.¹⁰¹ In Iraq alone, the value of the property left behind (Jewish assets were frozen by the Iraqi government in 1951, effectively stripping them of all they owned) has been estimated to be between \$150 and \$200 million.¹⁰² At today's present value, the total loss of Jewish property in Iraq may be as high as \$4 billion.¹⁰³ Similarly, the real value of Jewish assets in Egypt ranged from \$3 to \$4 billion.¹⁰⁴ These values do not include the assets left behind in Algeria, Libya, Tunisia, Yemen, Aden, Lebanon, or Morocco. Furthermore, these numbers do not reflect the worth of religious and cultural artifacts that may not be monetarily valuable, but are priceless nonetheless.

Summary

The Jewish exodus from the Arab world was not precipitated by any single event, but was rather the result of a series of events and factors. The lesser-status afforded to Jews by the *dhimma* was historically a basis for persecution and formed a culture of discrimination against Jews that lasted until their flight

¹⁰⁰ 149 CONG. REC. H3737 (May 7, 2003) (statement of Rep. Frank Pallone).

¹⁰¹ See Israel Ministry of Foreign Affairs, *Israel Line*, *supra* note 7; see also Jessica McCallin, *Jews Demanding Compensation from the Arab World*, MUSLIM NEWS, Dec. 20., 2002, available at <http://www.muslimnews.co.uk/paper/index.php?article=1074>.

¹⁰² See STILLMAN, *MODERN TIMES*, *supra* note 2, at 163.

¹⁰³ See Itamar Levin, *Jewish Property in Iraq, Egypt and Syria: Can it be Retrieved in Court?*, 36 JUSTICE 9 (Autumn 2003), available at http://www.intjewishlawyers.org/pdf/JUSTICE_36.pdf.

¹⁰⁴ See *id.* at 11.

from the Islamic world.¹⁰⁵ Yet, in the modern imperialistic age, where the Christian *dhimmis* were dominant, the traditional *dhimma* relationship collapsed.¹⁰⁶ Since Muslims were no longer required to tolerate the *dhimmis*, persecution of Jews ensued as they were a small and unprotected people.¹⁰⁷ The imperialist powers also introduced classical European anti-Semitism to the Muslim world, from which more discrimination and persecution followed.¹⁰⁸ Zionism and Pan-Arabism further reinforced the Arab feeling that Jews, as a group, were their enemies.¹⁰⁹ This feeling reached its climax with Arab sympathy to the Axis powers during World War II and the 1948 Arab-Israeli War, which pitted the Jews of Israel against the Arab world.¹¹⁰ The resulting actions taken by Arab governments and Arab citizens, whether they were anti-Jewish laws or popular riots, made life untenable for Jews and finally led to their mass exodus from the Arab world.¹¹¹ After more than two millennia of life in the Arab world, the Jewish presence there ceased.

SECTION II: LEGAL ANALYSIS OF THE CLAIMS OF JEWISH REFUGEES

A. The Relevance of Current Events to the Issue of Compensation

Current events have underscored the relevance and urgency of compensation for Jewish refugees of the Arab world. The 2000 Camp David peace negotiations introduced a plan to create a fund for Jewish refugees, setting a possible precedent for future peace

¹⁰⁵ See *supra* note 20.

¹⁰⁶ See *supra* note 29.

¹⁰⁷ See *supra* notes 24-25.

¹⁰⁸ See *supra* note 30.

¹⁰⁹ See *supra* notes 51-53.

¹¹⁰ See *supra* note 78.

¹¹¹ See *supra* note 85.

summits and agreements.¹¹² Recent initiatives by grassroots Jewish organizations have sought to bring both “historical attention and financial compensation to Jewish refugees.”¹¹³ In 2003, the proposed Israeli-Palestinian Peace Enhancement Act would have amended the Foreign Assistance Act of 1961¹¹⁴ to include a clause stipulating that any peace agreement shall provide “a permanent resolution for both Palestinian refugees and Jewish refugees from Arab countries.”¹¹⁵ Further, the consequences of the War in Iraq, with the overthrowing of Saddam Hussein’s Ba’ath Party and the possibility for democracy, have opened up an “opportunity to reconcile Iraqi Jews with other Iraqis” and the hope for reparations of lost assets and property.¹¹⁶ In January 2004, President Muammar Gaddafi of Libya, intent on ending his country’s international isolation, said that he is ready to compensate Jewish refugees that fled from his country.¹¹⁷ Finally, the old age of the

¹¹² See LEVIN, *supra* note 57, at 229; see also U.S. Embassy in Australia, Department of State Washington File, *Transcript: Clinton Interview by Israeli Television on Peace Talks* (July 28, 2000), available at <http://usembassy-australia.state.gov/hyper/2000/0728/epf501.htm>.

¹¹³ Freedman, *supra* note 93.

¹¹⁴ 22 U.S.C. § 2351 (1961).

¹¹⁵ H.R. REP. NO. 108-105, at 78 (May 16, 2003), available at http://www.house.gov/international_relations/democratic/108_105_1.pdf.

¹¹⁶ Basri, *supra* note 18, at 658.

¹¹⁷ See Yoav Stern, *Report: Israeli Delegation to Visit Libya Later This Month*, HA’ARETZ (Jan. 6, 2004), available at <http://www.haaretzdaily.com/hasen/spages/380134.html> (last accessed Jan. 7, 2004) (copy on file with the author) (“Libyan President Muammar Gaddafi was quoted as saying he is ready to compensate Libyan Jews whose properties were confiscated.”); see also Zvi Bar’el, *Gadhafi’s Son Says Libyan Jews Entitled to Compensation*, HA’ARETZ, available at <http://www.haaretzdaily.com/hasen/spages/413084.html> (last accessed Apr. 7, 2004) (copy on file with the author) (“Libyan Jews will be able to receive compensation for property confiscated when they left the country, the son of Libyan leader Muammar Gadhafi told the Egyptian weekly *Al-Ahram Al-Arabi*....”); *Report: Israeli Delegation with Mossad Officials to Visit Libya as Kadhafi Agrees to Compensate Libyan Jews*, AL BAWABA (January 6, 2004), at <http://www.albawaba.com> (copy on file with the author) (“Libyan leader

refugees themselves has spurred a new urgency in documenting their stories and getting reparations for them.¹¹⁸ All of these events have brought the issue of compensation for Jewish refugees to the international spotlight, making a settlement of claims possible, if not entirely probable.

B. What is Israel doing? The Department for the Rights of Jews from Arab Countries

Prior to July 2000, the Israeli government refrained from making any public statement on the matter of compensation for Jewish refugees.¹¹⁹ In the 1950s, Israel's identity was based on the perception that it was the chosen home for world Jewry.¹²⁰ Hence, Israel viewed Jews from the Arab world as Zionist pioneers coming home to the motherland and not as refugees whose property was confiscated.¹²¹ Geopolitics in the 1950s also lent itself to the view that the Jewish flight from the Arab world and the Palestinian flight from Israel were part of a legitimate population exchange, neglecting the reasons behind the exodus and its consequences.¹²² As then Prime Minister David Ben-Gurion noted, the Arab countries should "settle [the Palestinians] among their own people," just as Israel had done with Jews of Arab

Moamer Kadhafi is quoted as saying he is ready to compensate Libyan Jews whose properties were confiscated.... He called to compensate those that lost their assets and money during the early stages of the revolution. Kadhafi rose to power after the 1969 Socialist Revolution. He said the state must try those who gained control of other people's properties in the name of the revolution.").

¹¹⁸ The American Sephardi Federation, an organization dedicated to Middle Eastern Jewry, warns potential claimants that, "[t]ime is of the essence! With the passage of time, crucial evidence and eyewitness testimonies are being lost forever." American Sephardi Federation: Jewish Refugees from Arab Countries, at <http://www.jewishrefugees.org/Claims%20Forms.htm> (last accessed Jan. 31, 2004).

¹¹⁹ See LEVIN, *supra* note 57, at 229.

¹²⁰ See Freedman, *supra* note 93.

¹²¹ See *id.*

¹²² See *id.*

countries.¹²³ Even after the Camp David Peace Treaty with Egypt, which called for the establishment of a joint claims committee, Israel neglected to bring up the issue of compensation.¹²⁴ Israel's strategic interest in peace outweighed its desire for reparations.¹²⁵ The country chose not to jeopardize an already fragile peace agreement with Egypt by insisting on compensation.¹²⁶ Israel also feared that asking for compensation on behalf of the Jewish refugees would open up a Pandora's Box for similar claims made by Palestinians against Israel.¹²⁷

Then, in July 2000, several days after the failed Middle East Peace Summit at Camp David, President Bill Clinton announced, in an interview with Israeli television, that Jewish refugees should be compensated as part of a peace plan.¹²⁸ He stated:

There is, I think, some interest, interestingly enough, on both sides, in also having a fund which compensates the Israelis who were made refugees by the war, which occurred after the birth of the State of

¹²³ Israel Ministry of Foreign Affairs, *The Arab Refugees: Statement to the Knesset by Prime Minister Ben-Gurion* (Oct. 27, 1961), available at <http://mfa.gov.il/mfa/go.asp?MFAH01am0> (last accessed Mar. 26, 2005) (Ben-Gurion also stated that since the number of Palestinians that left Israel was the same amount as the Jews who left Arab countries, "what has taken place is an unplanned, but *de facto* exchange of populations....").

¹²⁴ See Freedman, *supra* note 93; see also LEVIN, *supra* note 57, at 228 ("[O]ne clause in the [Camp David] agreement mentioned the establishment of a joint claims committee. But the committee was never formed, mainly because Israel allowed the matter to be forgotten.").

¹²⁵ See Freedman, *supra* note 93.

¹²⁶ See *id.*

¹²⁷ See LEVIN, *supra* note 57, at 227-28 ("[I]t is very likely that Israel-Palestinian negotiations on refugee compensation will factor in many other calculations, and Israel prefers not to get involved too early in the game.... Israel did not want to open the Pandora's box equating Jewish and Palestinian assets.").

¹²⁸ See LEVIN, *supra* note 57, at 229.

Israel. Israel is full of people, Jewish people, who lived in predominantly Arab countries who came to Israel because they were made refugees in their own land.

That's another piece of good news I think I can reveal out of the summit. The Palestinians said they thought those people should be eligible for compensation, as well. So we'll have to set up a fund and we will contribute. I went to the G-8 in Okinawa in part to give them a report, and I asked the Europeans and the Japanese to contribute, as well. And there will be other costs associated with this. So it will not be inexpensive.¹²⁹

Following President Clinton's statements, Israel made its position known. The Office of the Israeli Prime Minister stated, "Israel supports the establishment [of] a framework to allocate compensation to persons who suffered as a result of the 1948 War, that would also grant compensation to Jews from Arab countries."¹³⁰

On March 3, 2002, pursuant to Decision Number 1544, the Israeli Government formed the Department for the Rights of Jews from Arab Countries and Iran.¹³¹ Prior to the formation of this

¹²⁹ See U.S. Embassy in Australia, *supra* note 112; see also LEVIN, *supra* note 57, at 229.

¹³⁰ LEVIN, *supra* note 57, at 229 (quoting the Office of the Prime Minister of Israel).

¹³¹ See Israel Ministry of Justice, *Rights of Jews From Arab Lands: About Us*, available at <http://www.justice.gov.il/MOJEng/Rights+of+Jews+from+Arab+Lands/AboutUs.htm> (last accessed Mar. 26, 2005). Decision Number 1544 was renewed by the Israel on December 28, 2003 in Government Decision Number 1250. Decision Number 1250 also broadened the scope of the previous law by establishing a steering committee that will centralize the handling of the subject and coordinate the policies of various international bodies devoted to Jewish refugees. Furthermore, Decision Number 1250 allocates a budget to implement the claims process and to develop the infrastructure of the Department for the Rights of Jews from Arab Countries and Iran. See Israel Ministry of Justice, *Rights of Jews From Arab Lands: Government Decision n. 1250, December 28*,

department, there had existed a relatively ineffective office in the Department of Justice that registered claims of only Iraqi, Egyptian, Syrian and Yemeni Jews.¹³² The mandate of the new department includes the registration of claims from all the Jews who escaped Arab countries, as well as those that left Iran, since the 1940s.¹³³ Furthermore, the Department's activities are not limited to Jews that immigrated to the State of Israel – its scope reaches all Jews originally from Arab lands and their descendants living in the Diaspora.¹³⁴

The Department for the Rights of Jews from Arab Countries and Iran has several responsibilities.¹³⁵ First, it is involved in the preservation, documentation and processing of private claims and other documents collected since the 1950s and stored in the Ministry of Justice.¹³⁶ Second, starting in 2003, the Department began to expand the collection and registration of data dealing with Jewish private and communal property through the use of claims forms available in a number of languages.¹³⁷ The data will be used for both legal and historical purposes.¹³⁸ The legal aspects are to analyze discriminatory laws that led to the

2003, available at <http://www.justice.gov.il/MOJEng/Rights+of+Jews+from+Arab+Lands/Government+Decision.htm> (last accessed Mar. 26, 2005) (copy on file with the author).

¹³² See Israel Ministry of Justice, *Rights of Jews From Arab Lands: About Us*, *supra* note 131.

¹³³ See *id.*

¹³⁴ See *id.*

¹³⁵ See *id.*

¹³⁶ See *id.*

¹³⁷ See Israel Ministry of Justice, *Rights of Jews From Arab Lands: About Us*, *supra* note 131; see also Israel Ministry of Foreign Affairs, *Israel Line*, *supra* note 7 (“After decades of delay, the Ministry of Justice is expanding its registry of property claims by Jews from Arab countries....Officials are compiling numerous statements about private and communal property left behind in Arab countries and electronically archiving thousands of forms filed by immigrants from Arab nations in the 1950s.”).

¹³⁸ See Israel Ministry of Justice, *Rights of Jews From Arab Lands: About Us*, *supra* note 131.

Jewish exodus, to provide assessments for compensation, to study similar claims that were submitted in other contexts (Holocaust claims), and to lobby in appropriate forums (United States Congress, the European Parliament, etc.).¹³⁹ The historical purposes of collecting the data will culminate in the formation of an Internet site giving personal testimonies and descriptions of the property abandoned in the Arab world.¹⁴⁰ This historical database will be used by Israel to remember the tragedies that these Jews faced and to counter Arab propaganda that denies the expulsion and persecution of Jews.¹⁴¹ The goal of this effort to inform the international community about the Jewish exodus is to widen the “campaign for justice for Jews from Arab lands and Iran” and lay the groundwork for future negotiations on compensation.¹⁴²

In a December 2003 Cabinet Communiqué, the Justice Ministry announced that it will cooperate with other ministries, Jewish organizations, and Jewish community representatives in order to achieve the goals of the Department for the Rights of Jews from Arab Countries.¹⁴³ In fact, it has been Israeli and Diaspora Jewish organizations that have kept the campaign for compensation alive through the decades following the exodus, up until President Clinton’s statement. One such organization, the World Organization of Jews from Arab Countries, held several conferences, published booklets, and lobbied the United States Congress during the 1970s and 1980s – a time when Israel was generally uninvolved in the campaign for compensation.¹⁴⁴ Recently, the Conference of Presidents of Major American Jewish Organizations, the World Jewish Congress, and the American Sephardi Federation formed Justice for Jews from Arab Countries.¹⁴⁵ As a coalition of grassroots organizations, Justice for

¹³⁹ See *id.*

¹⁴⁰ See *id.*

¹⁴¹ See *id.*

¹⁴² *Id.*

¹⁴³ See Israel Ministry of Foreign Affairs, *Cabinet Communiqué*, (Dec. 28, 2003), available at www.mfa.gov.il/mfa/go.asp?MFAH0o430.

¹⁴⁴ See LEVIN, *supra* note 57, at 218.

¹⁴⁵ See Justice for Jews from Arab Countries, available at <http://www.jewishrefugees.org/JusticeForJews.htm> (last accessed Feb. 1, 2004);

Jews from Arab Countries has been instrumental in bringing the issue of Jewish refugees to the international arena and in the collecting and processing of claims.¹⁴⁶ Without the lobbying and public relations efforts of such grassroots and community-based organizations, the campaign for compensation would be significantly less organized and potent.¹⁴⁷

Israel, along with these Jewish organizations, has argued that it received no financial assistance from the United Nations or non-governmental organizations in its absorption of Jewish refugees, while wealthy, oil-rich Arab governments have relied on the United Nations, and more specifically, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), to perpetuate Palestinian misery as a political weapon against Israel.¹⁴⁸ Prime Minister Ben-Gurion stated in 1961 that, "Israel did not wait until the Arab rulers should return the property of the Jewish refugees, but, regarding them as human beings and brothers, saw to their absorption The Arab rulers treated the Arab refugees not as human beings and members of their own people, but as a weapon with which to strike at Israel."¹⁴⁹ This

see also Freedman, *supra* note 93 ("Justice for Jews From Arab Countries...has united grass-roots groups active on the issue, like the World Organization of Jews From Arab Countries, with pillars of the Jewish establishment, like the President's Conference. The new organization's honorary chairmen include Richard C. Holbrooke, former American ambassador to the United Nations.").

¹⁴⁶ *See* Justice for Jews from Arab Countries, *supra* note 145.

¹⁴⁷ *See* Freedman, *supra* note 93 ("While the events of this exodus are decades old, the advocacy on behalf of Jewish refugees has grown markedly in the last several years. These efforts, ranging from briefings for members of Congress to diplomatic maneuvers in the United Nations, seek to bring both historical attention and financial compensation to the Jewish refugees.").

¹⁴⁸ *See id.*; *see also* McCallin, *supra* note 101.

¹⁴⁹ *See* Israel Ministry of Foreign Affairs, *Statement by Ben-Gurion*, *supra* note 123. *But see* Freedman, *supra* note 93. Professor Rashid Khalidi of Columbia University believes that the idea of making Palestinians citizens of Arab countries is misguided. As he claimed, "In a Zionist narrative, [Jews] should've wanted to go to Israel in the first place. The Palestinians didn't want to leave and weren't going back to their homeland. But some people have tried to tell Arabs

argument holds some merit. Palestinians were either forced out of Israel or fled during the 1948 Arab-Israel War.¹⁵⁰ However, while the Jewish refugees were readily absorbed into Israel, with full citizenship rights, Palestinian refugees have been refused citizenship in most Arab countries and many live in United Nations-sponsored refugee camps throughout the Arab world.¹⁵¹

Whereas the world community and the United Nations have prolonged the status of Palestinians as refugees, Israel absorbed the other refugee group caused by the 1948 Arab-Israeli War at a great financial cost.¹⁵² Hence, the Government of Israel has contended that the world community should rectify this problem as Israel should not be alone in having to bear the burden of both Jewish and Palestinian reparations. It has therefore conditioned a future peace agreement on the compensation of Jewish refugees.¹⁵³

what their nationalism should be and have tried to tutor the Palestinians in the proper understanding of their own national identity." *Id.*

¹⁵⁰ See MORRIS *supra* note 25, at 258 (Many factors led to the Palestinian exodus, including "isolation among a cluster of Jewish settlements, a feeling of being cut off from Arab centers, a lack of direction by national leaders and a feeling of abandonment by the Arab world, fear of Jewish assault, reports and rumors about massacres by the Jews, and actual attacks and massacres.").

¹⁵¹ See Human Rights Watch, *Human Rights Watch Policy on the Right of Return: Treatment and Rights in Arab Host States*, available at <http://www.hrw.org/campaigns/israel/return/arab-rtr.htm> (last accessed Feb. 1, 2004).

Initially the response of host Arab states to the incoming Palestinian refugees was to offer them refuge on the assumption that it would be temporary. When it became obvious that the problem would be protracted, the policies of Arab states toward the refugees changed, and the initial sympathy was coupled with an insistence on Israel's ultimate responsibility for them. As a result most Arab governments strongly opposed resettlement and naturalization of the refugees. Instead, they adopted policies and procedures aimed at preserving the Palestinian identity of the individuals and their status as refugees.

Id.; see also Freedman, *supra* note 93. In June of 2003, the House International Relations Committee criticized the UNRWA for its failure to permanently resettle Palestinian refugees. See *id.*

¹⁵² See Israel Ministry of Foreign Affairs, *Statement by Ben-Gurion*, *supra* note 123.

¹⁵³ See Israel Ministry of Foreign Affairs, *Statement by Ambassador Dan Gillerman*, *supra* note 85.

Nevertheless, Arab commentators and Jewish groups alike have warned about the consequences of linking the Jewish and Palestinian refugee situations. Professor Shibley Telhami believes that by putting the issue of compensation on the table, Israel may give Arab countries an edge, as they could insist on resettlement of refugees instead of compensation.¹⁵⁴ Arab countries would accept resettlement, as Jews would inevitably be a minority in Arab countries and probably would never return, whereas an influx of Palestinians into Israel would result in a demographic threat to the Jewish nature of the state.¹⁵⁵ This would force Israel to either admit that it will not accept Palestinian refugees or accept them and lose its Jewish character.¹⁵⁶ Additionally, Jewish groups are wary that by linking the two refugee situations, the claims will equalize, depriving both sets of refugees from the compensation and justice that they deserve.¹⁵⁷ While the Government of Israel

The legitimate rights of former Jewish refugees displaced from Arab countries is an issue that has not yet been adequately addressed by the international community. Since 1947, there have been over 681 UN resolutions on the Middle East conflict, including 101 that refer directly to the plight of Palestinian refugees. Not one of these resolutions even mentions the plight of Jewish refugees, let alone calls for action to address their suffering. If we are to address fairly the situation of the Middle East, the plight of these Jewish refugees can no longer be forgotten. No comprehensive Middle East peace settlement can be reached without recognition of, and redress for, the legitimate rights Jews displaced from Arab countries.

Id.

¹⁵⁴ See Freedman, *supra* note 93.

¹⁵⁵ See *id.*

¹⁵⁶ See *id.*

¹⁵⁷ See *id.* Stanley Urman, the executive director of Justice for Jews From Arab Countries, stated that his organization's goal was to ensure that both the Palestinian and Jewish refugees receive rights and redress. Professor Khalidi believes that the campaign for compensation for Jewish refugees should be dealt with by the Arab governments, rather than as a bait-and-switch with the Palestinians, as "Oriental Jews [will then have to] pay the price for Israel's confiscation of a very large amount of Palestinian property." *Id.*

might not object to this equalization, as it would not have to pay reparations to Palestinians, the former Minister for Social and Diaspora Affairs, Rabbi Michael Melchior, stated that "there would be no talk of offsetting Jewish against Palestinian claims but rather, that every person must be compensated individually."¹⁵⁸ Nonetheless, it is still an unsettled issue as to whether Israel will seek to offset the Palestinian and Jewish claims in the framework of a peace plan or to advocate compensation for each individual person, as justice would seem to require.

C. The Movement towards Remedies for the Jewish Refugees from Arab Countries

There are several legal and political bases for the right of the Jewish refugees to reparations. United Nations Security Council Resolution 242, adopted in 1967, calls for "a just settlement of the refugee problem," deliberately making no distinction between Arab and Jewish refugees.¹⁵⁹ The Camp David Accords between Egypt and Israel call for the establishment of a claims commission for "the mutual settlement of all financial claims."¹⁶⁰ The 1991 Madrid Peace Conference established a Multilateral Working Group whose mandate was to ensure the status and rights of "all persons displaced as a result of the 1948 Arab-Israeli conflict."¹⁶¹ In the peace agreement between Jordan and Israel, both parties promised to resolve the issue of refugees in the framework of this Multilateral Working Group.¹⁶² Finally,

¹⁵⁸ LEVIN, *supra* note 57, at 234-35.

¹⁵⁹ S.C. Res. 242, U.N. SCOR, U.N. Doc. S/RES/242 (1967); *see also* Basri, *supra* note 18, at 713 ("Justice Arthur Goldberg, the American delegate who was instrumental in drafting the unanimously adopted Resolution, has pointed out that the words 'Palestinian' or 'Arab' were deliberately left out of the Resolution to indicate that, in addition to the claims of the Palestinian refugees, the claims of the Jewish refugees from Arab lands need also be addressed.").

¹⁶⁰ Camp David Accords: The Framework for Peace in the Middle East, Sept. 17, 1978, Egypt-Isr., 17 I.L.M. 1463, 1469 [hereinafter Camp David Accords].

¹⁶¹ Justice for Jews from Arab Countries, *supra* note 145.

¹⁶² *See* Treaty of Peace Between the State of Israel and the Hashemite Kingdom of Jordan, Oct. 26, 1994, Isr.-Jordan, 34 I.L.M. 43, 49; *see also* Marc Perelman,

although it was not legally binding, President Clinton called for compensation for both Palestinian and Jewish refugees, through the formation of an international fund.¹⁶³ This proposal gave the reparations movement the political force and the momentum which it had previously lacked.

According to the Declaration of Principles of International Law on Compensation to Refugees, "the State that turns a person into a refugee commits an internationally wrongful act, which creates the obligation to make good the wrong done."¹⁶⁴ The Declaration makes no distinction between obligations to compensate a national or an alien made a refugee by State action.¹⁶⁵ Furthermore, a State that violates international law by creating a refugee situation is required, as appropriate, "(a) to discontinue the act; (b) to apply remedies provided under the municipal law; (c) to restore the situation to that which existed prior to the act; (d) to pay compensation in the event of the impossibility of the restoration of the pre-existing situation; and (e) to provide appropriate guarantees against the repetition...of the act."¹⁶⁶

Bills Introduced on Jews Displaced by 1948 War, THE FORWARD, Apr. 2, 2004, available at <http://forward.com/main/article.php?ref=perelman20040331951>.

Another target of the lobbying efforts is the Canadian government, which chairs a multilateral working group on refugees set up at the 1991 Madrid conference on Middle East peace. Although the working group has been dormant for years, Urman claims it might spring back into action when the issue of compensation for refugees eventually comes up in the context of a final peace settlement.

Id.

¹⁶³ See *supra* note 129.

¹⁶⁴ Luke T. Lee, *The Cairo Declaration Of Principles Of International Law on Compensation To Refugees*, 87 AM. J. INT'L. L. 157, 158 (1993) (Declaration is reprinted).

¹⁶⁵ See *id.*

¹⁶⁶ *Id.* at 158-59.

D. Specific Remedies

1. Restitution

Restitution is aimed at restoring the "situation that existed before the wrongful act was committed."¹⁶⁷ Restitution in this situation is unlikely for a number of reasons. First, Jewish properties were most likely destroyed and can never be returned to their rightful owners. Second, Arabs have settled on land that was once owned by Jews, making their evacuation a corollary to the introduction of Jews back onto that land. Third, in general, the Jewish refugees do not want to return to the Arab countries that persecuted them. Fourth, the passage of time and the old age or death of many refugees will further inhibit restitution as there are few people left who would be able to resettle in their native lands. As the situation can never return to the way it was before the Jewish exodus, restitution for the Jewish refugees is improbable.

2. Truth and Reconciliation Commission

A truth and reconciliation commission seeks to provide justice to the victims of human rights abuses by creating a historical account of the violations that examines the causes and nature of the abuses.¹⁶⁸ It provides a framework conducive to admissions of guilt as it facilitates amnesty for those who make full disclosure.¹⁶⁹ Commissions can make recommendations for compensation, and victims are often entitled to pursue civil suits, as long as they are not barred by amnesty provisions.¹⁷⁰ Truth commissions can lead to public apologies, acknowledgment of past

¹⁶⁷ Emanuela-Chiara Gillard, *Reparations for Violations of International Humanitarian Law*, 85 INT'L REV. OF THE RED CROSS 529, 531 (2003).

¹⁶⁸ See HENRY J. STEINER & PHILIP ALSTON, INTERNATIONAL HUMAN RIGHTS IN CONTEXT: LAW, POLITICS, MORALS 1218-48 (2d ed. 2000).

¹⁶⁹ See Eric A. Posner & Adrian Vermeule, *Transitional Justice as Ordinary Justice*, 117 HARV. L. REV. 761, 767 (2004).

¹⁷⁰ See STEINER, *supra* note 168.

wrongdoing and the availability of some level of justice to the victims.¹⁷¹ “Victims cannot forget what has happened to them and cannot proceed to build for the future until their calls for justice have been answered Forgiveness cannot be considered without knowledge and insight – and without forgiveness, there cannot be any meaningful reconciliation.”¹⁷² Therefore, truth commissions are typically used during transitions from a more restrictive form of government to a more democratic one, providing closure and enabling the new government to succeed without the burdens of the past.¹⁷³

Truth commissions are useful for a variety of reasons. First, by focusing on broad patterns of violence, instead of individual guilt, they can gather a more comprehensive record of past injustices than individual trials.¹⁷⁴ “[P]ublic exposure of the truth is the only effective way of ensuring that history is recorded more accurately and more faithfully than otherwise would have been the case. [For example, the] Nuremberg Trials have made the work of Holocaust deniers far more difficult.”¹⁷⁵ Second, truth commissions allow victims to tell their stories and may uncover injustices otherwise silenced or denied.¹⁷⁶ Third, they render justice to the victims by formally acknowledging the abuses committed and by providing for alternative forms of accountability, ranging from monetary reparation to the public identification of the perpetrators.¹⁷⁷ Fourth, truth commissions

¹⁷¹ Carsten Stahn, *Accommodating Individual Criminal Responsibility and National Reconciliation: The UN Truth Commission for East Timor*, 95 AM. J. INT’L L. 952, 957 (2001).

¹⁷² Richard J. Goldstone, *Justice as a Tool for Peace-Making: Truth Commissions and International Criminal Tribunals*, 28 N.Y.U. J. INT’L L. & POL. 485, 492 (1996).

¹⁷³ See Stahn, *supra* note 171, at 954.

¹⁷⁴ See *id.*

¹⁷⁵ See Goldstone, *supra* note 172, at 489.

¹⁷⁶ See Stahn, *supra* note 171, at 954.

¹⁷⁷ See *id.*

may have a deterrent effect, as political and military leaders realize that they are likely to be held accountable for human rights violations.¹⁷⁸

A truth commission regarding Jewish refugees may be appropriate and feasible in Iraq, as it is undergoing a change from a dictatorship to a democracy.¹⁷⁹ "As potentially the first democratic Arab country, Iraq could [also] be the first Arab country to confront its past and reconcile with the Jews."¹⁸⁰ Jews and other Iraqis have suffered together as they have "shared the common legacy of British colonialism, as well as the regime of Saddam Hussein."¹⁸¹ A truth commission in Iraq could address the claims of all of the groups that suffered under Iraqi dictatorships. This process would reinforce Iraqi democracy, as even a small amount of justice would be rendered for these historically oppressed groups. Without some attempt at reconciliation between Iraq's many factions, it is doubtful that a true democracy could take hold. Hence, if and when the situation in Iraq stabilizes, it may be in the best interests of the Iraqi Governing Council, the United States Military, and the Iraqi people to form a truth commission to address all of the human rights claims that the new government is bound to receive.

However, the success of a truth commission is dependent on context. A truth commission may be appropriate and may even be possible for Iraq, as it is undergoing a transition in government and may soon be the first Arab democracy. However, it is doubtful that even Iraq or any other Arab state would agree to a truth commission, absent Israeli willingness to employ one for the

¹⁷⁸ See Goldstone, *supra* note 172, at 490.

¹⁷⁹ See Basri, *supra* note 18, at 716.

¹⁸⁰ *Id.* at 718. But see Levin, *supra* note 103, at 12.

The downfall of Saddam Hussein's regime in Iraq has revived hopes that the new regime will compensate Iraqi Jews for their lost property, although it seems that these hopes will not be realized any time soon. It will take several years for the new regime to stabilize and Jewish claims do not top the priorities of the new Iraq.

Id.

¹⁸¹ Basri, *supra* note 18, at 718.

Palestinian refugees.¹⁸² Hence, for a comprehensive truth commission to be realized, it would have to be formed pursuant to a Middle East peace treaty between Israel and *all* of its neighbors.¹⁸³ Yet, it should still be stressed that while a regional peace plan may be necessary to form a truth commission, recognition of the rights of both Palestinian and Jewish refugees, through a truth commission or any other form, is needed to legitimize the peace agreement under international law and world opinion.

3. Litigation

Litigating claims in national courts against the Arab countries or individuals responsible for the confiscation of Jewish property would likely be unsuccessful. While the courts of different countries have considered claims by victims of human rights abuses, only a small amount of such claims have been successful.¹⁸⁴ In general, there have been three grounds for the failure of these claims: (1) a peace settlement precluded lawsuits; (2) sovereign immunity protected States from scrutiny by national courts; or (3) the right to reparations was non-self-executing, as international law did not give individuals standing to bring such suits before domestic courts.¹⁸⁵ Other challenges, including time limitations and the enforcement of judgments, have precluded

¹⁸² In February 2004, the Iraqi Council rejected the return of Iraqi Jews, although this decision is not binding, as the chief American administrator, Paul Bremer, did not sign it into law. See Filkins, *supra* note 87 (“‘My feeling is, as long as the Palestinian problem exists, as long as there is a state of war, then we should not allow the Jews to return,’ said Muhammad Bahaddin Saladin, a member of the Governing Council. ‘The minister of defense in Israel is an Iraqi Jew. Should we let him return?’”).

¹⁸³ See *infra* Section 3 (analyzing barriers to peace in the Middle East).

¹⁸⁴ See Gillard, *supra* note 167, at 537.

¹⁸⁵ See *id.*

successful litigation in domestic courts.¹⁸⁶

In the United States, victims of human rights violations abroad have used the Alien Tort Claims Act (ATCA) to bypass traditional notions of sovereign immunity and sue their oppressors. The ATCA states that "district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."¹⁸⁷ In the landmark case of *Filártiga v. Pena-Irala*,¹⁸⁸ the Court of Appeals held that state-sanctioned torture was within the purview of the ATCA.¹⁸⁹ Congress later passed the Torture Victim Protection Act of 1991 (TVPA),¹⁹⁰ giving American courts jurisdiction over civil suits concerning torture or extrajudicial killing committed abroad.¹⁹¹

Both the ATCA and the TVPA have been used to litigate claims of foreign human rights abuses, but the Bush "administration has . . . made it clear that it opposes much of the *Filártiga*-based case law in favour of plaintiffs."¹⁹² Furthermore,

¹⁸⁶ See *id.* at 539.

¹⁸⁷ 28 U.S.C. § 1350 (2005).

¹⁸⁸ *Filártiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980).

¹⁸⁹ *Id.* at 880, 884-85.

¹⁹⁰ 28 U.S.C. § 1350 (2005).

¹⁹¹ *Id.*

¹⁹² J. Romesh Weeramantry, *Time Limitation Under the United States Alien Tort Claims Act*, 85 INT'L. REV. OF THE RED CROSS, 627, 629 (2003). In fact, in 2004, the Supreme Court heard the *Sosa v. Álvarez-Machain* case on whether the Alien Tort Claims Act allows foreign citizens to use the federal courts to sue for damages for human rights violations committed overseas. 124 S.Ct. 2739 (2004). The United States argued:

[T]he law itself created no rights that could be invoked by private parties but simply provided jurisdiction over a limited category of cases. [It] said that private human rights suits - some relying on treaties or international agreements that the United States has not signed - threatened the separation of powers by injecting the federal courts into the business of articulating the country's foreign policy.

Linda Greenhouse, *Justices Hear Case about Foreigners' Use of Federal Courts*, N.Y. TIMES, Mar. 31, 2004, at A16. The Supreme Court ended up ruling that federal courts have jurisdiction to hear cases by foreigners who claim to be victims of human rights violations outside the United States, yet the Court

although the ATCA does not contain a limitations-period, “case law demonstrates that United States courts have not entertained seriously a view that any claim under the ATCA is free from a limitations period.”¹⁹³ Because of the similarity between the ATCA and the TVPA and because of the need to limit claims out of practical necessity, courts have used the TVPA’s ten-year limitations period and have applied it to ATCA claims.¹⁹⁴ Hence, plaintiffs suing under both the ATCA and TVPA have a ten-year window of opportunity to file their claims.¹⁹⁵ After this ten-year period is over, claims filed under the TVPA will be denied and claims filed pursuant to the ATCA will continue only by the discretion of the court.¹⁹⁶

Any suit commenced in a United States court on behalf of the former Jewish refugees against the Arab countries would probably fail if limited to a ten-year statute of limitations. As there were almost no Jews left in the Arab world ten years ago and most of the human rights violations occurred prior to the 1970s, the statute of limitations to file claims under either the ATCA or TVPA has passed. Furthermore, the courts are unlikely to waive this limitation as the Bush administration has strongly advocated for a restrictive approach to the ATCA.¹⁹⁷ Therefore, lawsuits in United States courts will probably be ineffective in compensating former Jewish refugees.

While international law imposes no statute of limitations for the prosecution of war crimes and crimes against humanity,¹⁹⁸

left many questions unanswered and never addressed the issue of the statute of limitations of the ATCA. See Linda Greenhouse, *Human Rights Abuses Worldwide Are Held to Fall Under U.S. Courts*, N.Y. TIMES, June 30, 2004, at A21.

¹⁹³ Weeramantry, *supra* note 192, at 632.

¹⁹⁴ See *id.* at 631.

¹⁹⁵ See *id.* at 635.

¹⁹⁶ See *id.*

¹⁹⁷ See *id.*

¹⁹⁸ See *id.* at 632.

litigation in an international court may be unsuccessful as well. First, many internationally-sanctioned remedies are not available to Jewish refugees because the historical account of their suffering has been unexplored.¹⁹⁹ Also, since there were over 800,000 refugees, each with a potential claim, individual suits in an international court would overwhelm an international court.²⁰⁰ Instead of justice for all or most of the Jews from the Arab world, there would be justice for only the few Jews who might qualify to have their claims heard by an international court. Finally, it would be unlikely, even if a suit was successful, that an Arab government would pay outside of a political settlement with Israel. Such a country would likely suffer harsh political backlash from its own people and from other Arab nations.²⁰¹ Consequently, compensation and recognition of suffering may not be available in the international court system either.

4. Insurance

In 2003, while processing 12,000 files on property and assets held by Jews in Arab countries, the Israel Justice Ministry's Department for the Rights of Jews from Arab Countries found 200 cases of Iraqi Jews whose insurance policies were never honored because they were expelled from that country.²⁰² In April 2004, it was announced that three of these Jews who were forced out of their homes and lost their property will be paid \$130,000 by Axa, a French insurance company.²⁰³ Four more Iraqi Jews that took out insurance plans with the company are eligible for compensation as

¹⁹⁹ See Basri, *supra* note 18, at 715.

²⁰⁰ See Liesbeth Zegveld, *Remedies for Victims of Violations of International Humanitarian Law*, 85 INTL. REV. OF THE RED CROSS, 497, 522 (2003).

²⁰¹ See Levin, *supra* note 103, at 12 ("[I]t seems that partial compensation for Jews from Arab countries can only be achieved within the framework of a comprehensive agreement in the Middle East.").

²⁰² See Shlomo Shamir, *Insurance Firm to Pay Jews who Fled Iraq in 1950s*, HA'ARETZ, Apr. 20, 2004, available at <http://www.haaretz.com/hasen/pages/417221.html> (copy on file with the author).

²⁰³ See *id.*

well.²⁰⁴ This marks the first time that Jews who were expelled from Arab countries received compensation.²⁰⁵

While this development is promising for the Jewish refugees, several important limitations exist on the eligibility for compensation from insurance plans. First, in the case of the Iraqi Jews mentioned above, it is likely that they had to have been Iraqi citizens when they purchased the insurance policies.²⁰⁶ Therefore, Jews who were stripped of their citizenship before they bought insurance may not be covered. Second, insurance payments are applicable only to those Jews who bought an insurance policy. Hence, not every Jew would be covered and not every asset would be covered, which would deny payment to many Jews. Third, not every insurance policy is on record with the Israeli government; only 200 were found. Moreover, not every Jew has a record of lost property or lost assets. Hence, lack of documentation may bar payment as well. Finally, many insurance companies may simply be unwilling to compensate former Jewish refugees.

While insurance payments are positive developments, they cannot and will not provide compensation to the thousands of other displaced Jews who do not qualify for insurance proceeds. On the other hand, those Jews who actually receive insurance proceeds will be denied the justice of receiving apologies from the Arab world. Instead, no one is held responsible for the atrocities committed and the Arab governments can escape liability by asserting that these Jews were already compensated by insurance companies. Nevertheless, the insurance payments made to the three Iraqi Jews may open the door for other Jews from other countries to examine the issue and file claims of their own with their respective insurance providers. Insurance payments hold a degree of merit as a means of compensation, since insufficient compensation is still better than no compensation.

²⁰⁴ *See id.*

²⁰⁵ *See id.*

²⁰⁶ *See id.*

5. Claims Commissions and Compensation Funds

A recent trend in international law has been the establishment of claims commissions, which provide remedies from victims of human rights abuses.²⁰⁷ Two examples of such commissions are (1) the United Nations Compensation Commission, established in 1991 by the Security Council to determine Iraq's liability to the Kuwaiti government, citizens, and corporations, and (2) the Eritrea-Ethiopia Claims Commission (EECC), established pursuant to the 2000 peace agreement to settle claims for loss, damage and injury.²⁰⁸ The EECC has been particularly successful, as over 400,000 claims have been filed by Ethiopian and Eritrean individuals in the last few years.²⁰⁹ Such mass-claim commissions "are the most appropriate for victims of mass crimes committed in settings where it is difficult to resolve claims on a case-by-case basis and where usually limited resources are available."²¹⁰ Generally, these commissions provide for either a return of property or financial compensation.²¹¹

A claims commission, established pursuant to a regional peace agreement, is the best hope for monetary compensation for the former Jewish refugees. Under President Clinton's proposed peace plan, the international community, including the United States, the European Union, Israel, the Arab countries, and Japan, would set up a fund, administered and supervised by the claims commission.²¹² The commission would ensure the objective distribution of funds to both Palestinian and Jewish claimants, as neither Arab governments nor a pro-Israeli American government would control the process. The establishment of an international fund would also reduce the burden of any one State. Unlike lawsuits, a commission can ensure that all of the refugees receive

²⁰⁷ See Zegveld, *supra* note 200, at 521; see generally Gillard, *supra* note 167, at 540-45 (discussing claims commissions).

²⁰⁸ See Zegveld, *supra* note 200, at 521.

²⁰⁹ See *id.* at 522.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² See *supra* note 129; see also Benvenisti & Zamir, *supra* note 45, at 339-40; Levin, *supra* note 103, at 12.

compensation. Finally, a mass-claim commission would work well in this situation as resolving claims on a case-by-case basis would be difficult due to a number of factors, including, but not limited to: (1) the time lapse between the exodus of both sets of refugees and the present, (2) loss or lack of sufficient documentation of confiscated property, and (3) the old age or death of many of the refugees.

Palestinians have feared that compensation to Jews may offset their own legitimate claims.²¹³ Palestinians often demand that compensation to Jewish claimants be the responsibility of the Arab states that caused their exodus.²¹⁴ The establishment of an international fund, pursuant to a Middle East multilateral peace treaty should allay these fears. Palestinians could be compensated regardless of what happens to the Jewish claimants. This would serve to depoliticize the issue, as both parties would be compensated, and it may also lessen the tendency to assert that one claim is more valid than the other.

Of course, the major obstacle towards the establishment of a claims commission and the compensation of Jewish refugees is the issue of Middle East peace. Without a comprehensive peace agreement, Arab governments that are officially at war with Israel will have little incentive to compensate Israel's Jewish citizens. Furthermore, the Arab world may not have the popular support to negotiate compensation for refugees while Israel and the Palestinians are still engaged in conflict. For its part, Israel will have no reason to compensate Palestinian refugees without getting security and a peace agreement in return. Therefore, until there is a regional treaty, establishing peaceful relations between Israel and the whole Arab world (including the Palestinians), it is unlikely that either group of refugees will be compensated. As it is

²¹³ See Freedman, *supra* note 93. Palestinian Professor Khalidi believes that the claims of the Jewish refugees should be addressed by the Arab states and should not be part of a "bait-and-switch" tactic. See *id.*

²¹⁴ See *id.*

doubtful that such a peace treaty will be signed in the near future, it is equally doubtful that Jewish or Palestinian refugees will receive compensation from a claims commission in the foreseeable future.

SECTION III: BARRIERS AND POSSIBLE SOLUTIONS TO REGIONAL PEACE

A. Conditions for a Regional Peace Agreement

As explained in the previous section, a claims commission is the best hope for reparations for both Palestinian and Jewish refugees. Such a commission, under international supervision, has the potential to recognize injustice and serve as an adequate system of compensating refugees for past harm. The commission may not end all the memories of oppression and violence, but it could end the claims of injustice. With the end of such claims, a *true* peace may be possible as long-harbored animosities and resentments will be recognized and managed. However, in order for the claims commission to be formed, there must be a regional Middle East peace agreement. Without the participation of all of the states and parties involved in causing the refugee issue, the commission cannot serve its dual purposes of recognizing guilt and compensating victims. Since there is little incentive for Israel or the Arab world to form a claims commission absent a regional peace agreement, it seems that a regional peace agreement is a prerequisite to the commission's formation. This leads to the final, and perhaps most unanswerable, question in this Comment: how can there be peace between Israel and its Arab neighbors, when they have been in a state of war for more than half a century?

A regional peace agreement in the Middle East is conditioned on a settlement between Israel and the Palestinians. Without a resolution to the Israeli-Palestinian problem, Arab states may not have the legitimacy or mandate to negotiate a peace agreement, as their citizens will refuse a normalization of relations while their fellow Arabs of the West Bank and Gaza are still in a conflict with Israel. For example, in 1994, Jordan entered into a peace agreement with Israel only after peace between Israel and

the Palestinians seemed all but assured.²¹⁵ The silent Arab majority's acceptance of peace between Israel and the Palestinians "empowered Jordan's King Hussein, one of the greatest fence-sitters of all time, to get off the fence and sign his own peace treaty with Israel on October 26, 1994."²¹⁶ Likewise, the 2002 Arab Peace Initiative, which was spearheaded by Saudi Arabia, stated that the Arab world will consider the conflict over, will enter into a peace agreement with Israel, and will normalize relations with Israel, if Israel would withdraw to pre-1967 boundaries, if there was a just solution to the Palestinian refugee problem, and if there would be the formation of an independent Palestine in the West Bank and Gaza, with East Jerusalem as its capital.²¹⁷ Similarly, President Bush's 2003 "Road Map to Peace" called for "Arab state acceptance of full normal relations with Israel and security for all the states of the region in the context of a comprehensive Arab-Israeli peace" once a permanent agreement to the Palestinian-Israeli conflict was established.²¹⁸ Unless a leader emerges and makes an overture for peace with Israel, as was the case with Anwar Sadat of Egypt, or conditions, such as war and democratization, change the facts on the ground, it is unlikely that there will be a regional peace agreement without a resolution to the Israeli-Palestinian conflict.²¹⁹

However, peace between Israel and the Palestinians is a necessary, but not sufficient, condition to regional peace. Issues such as state-sponsored terrorism, globalization, nuclear

²¹⁵ See MORRIS, *supra* note 25, at 629.

²¹⁶ THOMAS L. FRIEDMAN, FROM BEIRUT TO JERUSALEM 557 (1995).

²¹⁷ See Mideast Web, *The Arab Peace Initiative* (Mar. 28, 2002), available at <http://www.mideastweb.org/saudipeace.htm> (last accessed Mar. 29, 2005).

²¹⁸ The U.S. Department of State, *Press Statement: A Performance-Based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict* (Apr. 30, 2003), available at <http://www.state.gov/r/pa/prs/ps/2003/20062.htm>.

²¹⁹ See FRIEDMAN, *supra* note 216, at 512 ("History teaches us that in the Middle East, only overwhelming pain or pleasure – only war or a Sadat-like overture – will really make the parties ready to get pregnant.").

disarmament, the Golan Heights, water uses, the rise of Islamic fundamentalism, incitement and public perception are all barriers to a comprehensive peace agreement between Israel and its Arab neighbors. If and when the Israeli-Palestinian conflict ceases, these issues must be dealt with in order for a regional peace to take hold.

B. Barriers to an Israeli-Palestinian Peace Agreement and Possible Solutions

The causes of the Israeli-Palestinian conflict are well known. They include, but are not limited to, British colonialism, Zionism, Pan-Arabism, war, terrorism, settlements, and religious extremism. Yet, solving this conflict is a more complicated matter. There are many obstacles and impediments to an Israeli-Palestinian peace agreement. Some of them include: (1) mutual claims of rights and injustice, (2) the intertwining of the populations, (3) religious extremism and terrorism, and (4) a lack of effective leadership. Any agreement must recognize these issues, as well as others, and overcome them for peace to be possible.

i. Mutual Claims of Rights and Injustice

Both Israelis and the Palestinians claim that they have certain rights to the land between the Jordan River and the Mediterranean Sea. Palestinians have claimed that they have a right to return to land they left, either voluntarily or involuntarily, following the 1948 War. Palestinians also claim that they have a right to have a Palestinian state with Jerusalem as its capital. Other Palestinians, most notably those associated with Hamas and other terrorist organizations, claim that all of the land between the Jordan River and the Mediterranean, meaning both Israel and the territories, is Muslim land. Israel, on the other hand, has argued that it has a right to a Jewish state with Jerusalem as its capital. Israel has claimed that it has a right to the Golan Heights, the West Bank and Gaza, as it captured those lands from the Syrian, Jordanian, and Egyptian armies, respectively, in the 1967 War. It

has maintained over the years, that the land captured from the 1967 War is important for security and strategic reasons as well, as a buffer from future invasions, as a way to gather intelligence of activities in Palestinian cities, and as a bargaining chip for future peace. Furthermore, Israel's religious settler movement claims that it has a right to the West Bank, as those were lands that God gave the Jews in biblical times.

The Israelis and Palestinians use instances of historical injustice to justify their claims. The Palestinians cite examples of how they were expelled from their homes in 1948 as a basis for their "right of return." Israel, however, has contended that many Palestinians voluntarily left their homes, so as to facilitate the Arab invasion of Israel. Israel has also argued that the Palestinian right of return would nullify the right to have a Jewish state in the land of Israel, as the resulting demographics in Israel from the right of return would favor Palestinians, and not Jews. While these claims may be legitimate, the problem with them is that they are often competing claims, leaving little room for compromise. As author and *New York Times* Foreign Affairs columnist, Thomas Friedman, wrote:

Because of [the] overlapping historical claims, it is much more difficult for Israelis and Palestinians [than the Israelis and Egyptians] to recognize each other's basic rights in Palestine without feeling that they are undermining their own historical positions. Imagine how difficult it would have been to solve the problems of Europe if there had been no Berlin and no Paris, but just Germans and Frenchman each claiming Paris as their rightful capital.²²⁰

As long as the debate focuses on these historical claims and rights, peace is unlikely. If Israel and the Palestinians claim the same land

²²⁰ FRIEDMAN, *supra* note 216, at 523.

for what each side feels is a moral and just reason, there is little room for compromise.

Present day interests and realities must prevail over historical claims and rights. "As long as any party to the Arab-Israeli conflict is focused entirely on obtaining historical or God-given 'rights,' as he sees them, he is not going to be able to make decisions exclusively on the basis of interests."²²¹ In this sense, the Palestinians must give up their "right of return," because that is a claim that is incompatible with the recognition of Israel as a Jewish state – a precondition to any peace deal with the Israelis. Similarly, in a peace deal with the Palestinians, the Israelis must give up their claim of an expansive Jewish state, encompassing the entire West Bank. While settlements near Israel proper may be acceptable if there is a proportional land swap with the Palestinians (along the lines of the 2000 Camp David proposal), a claim to all of the territories ignores the reality that millions of Palestinians live there and that such a claim is anathema to the idea of a Palestinian state on that very land.

Recently, Israel has moved in positive ways to differentiate between its rights and its interests. In 2000, Prime Minister Ehud Barak proposed at the Camp David peace talks, that in return for a peace agreement, Israel was open to the idea of dividing its capital, Jerusalem, in two, with East Jerusalem becoming capital of the Palestinian state.²²² In effect, Barak's proposal recognized that Israel's interest in peace and security outweighed its right to East Jerusalem. Palestinian leader Yasser Arafat did not come to the same conclusion, as he rejected the peace plan, failed to propose a counter-offer and placed Palestinian rights ahead of Palestinian interests (namely, statehood).²²³

²²¹ *Id.* at 521.

²²² See Mideast Web, *The Israeli Camp David 2 Proposals for Final Settlement* (July 2000), available at <http://www.mideastweb.org/campdavid2.htm> (last accessed Mar. 29, 2005).

²²³ See Gary C. Gambill, *The Peace Process After Camp David*, 2 MIDDLE EAST INTELLIGENCE BULLETIN 7 (Aug. 5, 2000), available at http://www.meib.org/articles/0008_me1.htm (last accessed Mar. 26, 2005).

Prior to the summit, Israel had long insisted that no part of Jerusalem would be conceded to Arafat, while holding out the possibility of

In 2004, Prime Minister of Israel, Ariel Sharon, announced that in recognition of the stagnation in the peace process and to minimize the military and economic burden of the occupation, he plans on withdrawing the Israeli presence from the Gaza Strip.²²⁴ This includes evacuating settlers and redeploying its military outside of the Gaza Strip.²²⁵ The decision was even more potent, as it was made by Ariel Sharon as leader of the Likud party, which has historically argued for the idea of a "Greater Israel." Apparently, Prime Minister Sharon concluded that Israel's interest in separation outweighed its claim to settle Gaza.

Once the debate shifts from rights to interests, from what a party wants or feels it deserves to what a party needs, progress in the current conflict may be made. Any peace agreement will inevitably deal with the *interests* of the Israelis and the Palestinians. However, the *rights* of those parties can be recognized, even if they are not realized, in the context of the refugee claims commission. The claims commission may acknowledge the suffering and injustice of both sets of refugees and in this way recognize the legitimate claims of each. This

yielding control of several predominantly Palestinian suburbs. In the face of Arafat's recalcitrance, Barak crossed the Rubicon with a proposal that would grant the PA 1) full sovereignty over several Arab neighborhoods on the outskirts of Jerusalem (Beit Hanina, Kalandia, and Shuafat, according to Israeli press reports); civilian and administrative autonomy over Palestinian districts inside the Old City, including the Muslim and Christian quarters, and 3) symbolic sovereignty over the Dome of the Rock and the right to display the Palestinian flag. The Israelis also offered unprecedented concessions regarding the fate of Palestinian refugees. Despite the unprecedented scope of these concessions, Arafat rejected the offer, even after it was repackaged as an American 'bridging proposal.'

Id.

²²⁴ See *The Disengagement Plan of Prime Minister Ariel Sharon*, HA'ARETZ, available at <http://www.haaretz.com/hasen/pages/ShArt.jhtml?itemNo=416024> (last accessed Mar. 26, 2005).

²²⁵ See *id.*

framework would relieve the parties from the burden of claims of rights and allow them to deal only with interests, thereby making room for compromise and progress in any future negotiations.

ii. The Intertwining of the Populations

There is no natural geographic line separating the Israelis from the Palestinians. This creates a multitude of problems. For example, prior to the construction of the separation barrier in 2003-2005, Palestinian terrorists from the West Bank easily infiltrated into Israel. Years of terrorism, incitement and fear spurred Israelis to dream of separating from the Palestinians, rather than of living with them.²²⁶ The territories were no longer a source of security from Arab invasions, but a source of insecurity, in the form of terrorism.²²⁷ Rather than trying to coexist with the Palestinians, Israelis have come to the opposite conclusion – existing without the Palestinians. The Palestinians, meanwhile, feel that the growth of the settlements leaves little in the way of a viable and contiguous state and thereby favor separation as well. In a sense, Israel and the Palestinians are not just neighbors who hate each other – they are enemies living in the same house. Any peace plan must recognize this intertwining of the populations and find a way to separate them.

Many, presently unanswered, questions exist regarding the expectations of the parties involved, the separation of the populations and the probability of a meaningful peace. For example, will a Palestinian state be viable if it is not contiguous and is surrounded by Israeli land and settlements? Will Palestinians be prepared to accept a land swap along the lines of Prime Minister Barak's Camp David proposal, whereby Israel would keep some settlements and exchange a proportional amount of land in other areas to the Palestinians? Will Palestinians accept

²²⁶ See FRIEDMAN, *supra* note 216, at 544.

²²⁷ See *id.* Furthermore, the Iraqi Scud missile attack on Tel Aviv during the Persian Gulf War diminished the strategic importance of having the West Bank act as a buffer from attack. While Iraq may not have been able to hurt Israel with its tanks, it could reach it with its missiles. See *id.* at 544-45.

a demilitarized state to assuage Israeli fears of an army invading from such a close range? Will an Israeli state be secure if there is a land bridge connecting the West Bank to Gaza, if it must give up the settlements, if it must remove its military presence in the territories, and if the Palestinians get their own state? Will Israel be prepared to remove the settlers, who many in Israel view with affinity, while many others view with contempt? How will Israeli politicians deal with the backlash from its citizens after images are aired of Israeli soldiers forcing Israeli Jews from their homes near holy cities like Hebron?

Two recent actions taken by Israel highlight the problem of intertwining populations and exhibit unilateral remedies by Israel to relieve itself of the burden of the occupation and to protect itself and its citizens from terrorist attacks. First, Israel recently began construction of a barrier, separating Israel proper and many of its settlements from the Palestinian territories.²²⁸ In protecting its settlements, Israel has strayed from the "Green Line," the armistice line following the 1967 war that delineates the internationally recognized boundaries of Israel.²²⁹ Israel's motivation for the barrier has been to quell the tide of suicide bombers and other terrorists that come from the West Bank and attack both Israel and its settlements.²³⁰ Its justification stems from the fact that almost every suicide bomber in the last few years has come from the West Bank, but not from Gaza, which has a fence.²³¹ However, Palestinians have complained that the fence's route inside the Green Line is a "land grab," used by Israel to establish its presence

²²⁸ Tali Nir, *Palestinians Charge that Separation Fence is for Land Annexation, Not Security*, HA'ARETZ, Feb. 24, 2004, available at <http://www.haaretz.com/hasen/pages/ShArt.jhtml?itemNo=397486>.

²²⁹ See *id.*

²³⁰ See *id.*

²³¹ See Bradley Burston, *Background/Fence Divides Israel and U.S., Israeli and Israeli*, HA'ARETZ, Sept. 17, 2003, available at <http://www.haaretz.com/hasen/pages/ShArt.jhtml?itemNo=341412>.

on land that was taken from Palestinians.²³² Some Israelis have complained that the circuitous route of the barrier diminishes its security benefits and ironically will not result in a true separation, as some Palestinian villages are left on the Israeli side and some Israeli settlements are left on the Palestinian side.²³³

The second unilateral action is Ariel Sharon's plan to disengage from the Gaza Strip. Under the disengagement plan, Israel is expected to withdraw its military and settler presence from Gaza by the end of 2005. In an April 2004 letter to President Bush, Prime Minister Ariel Sharon laid out the reasons for withdrawing from Gaza:

Having reached the conclusion that, for the time being, there exists no Palestinian partner with whom to advance peacefully toward a settlement and since the current impasse is unhelpful to the achievement of our shared goals, I have decided to initiate a process of gradual disengagement with the hope of reducing friction between Israelis and Palestinians. The Disengagement Plan is designed to improve security for Israel and stabilize our political and economic situation. It will enable us to deploy our forces more effectively until such time that conditions in the Palestinian Authority allow for the full implementation of the roadmap to resume.²³⁴

Hence, in recognition of (1) the untenable mixture of the populations, (2) the stagnation of the peace process, (3) the constant criticism of Israel over the occupation, and (4) the

²³² See Nir, *supra* note 228.

²³³ See Burston, *supra* note 231. A recent study by the Washington Institute for Near East Policy found that less than one percent of the West Bank Palestinian population would be on the Israeli side of the barrier and roughly a quarter of Israeli settlers would be on the Palestinian side. See David Brooks, *Finally Good News in Mideast*, N.Y. TIMES, May 22, 2004, at A17.

²³⁴ Letter from Prime Minister Ariel Sharon to President George W. Bush, HA'ARETZ, Apr. 14, 2004, available at <http://www.haaretz.com/hasen/pages/ShArt.jhtml?itemNo=415475>.

economic and military burden of Israel's presence in Gaza, Prime Minister Sharon decided that it is in Israel's best interest to withdraw.²³⁵ Whereas the separation of the populations and the reduction of the Israeli presence in the territories may help the peace process, skeptics have argued that the disengagement plan may leave a power vacuum, whereby the terrorist group Hamas will fill the leadership void. In such a situation, Gaza would be further radicalized and a peaceful resolution of the conflict would be less likely to happen.²³⁶ Another criticism of Israel is that since Israel has said that it does not want to *negotiate* its withdrawal from Gaza, there is no concomitant Palestinian obligation to refrain from terrorism. A unilateral withdrawal may improve Israel's image²³⁷ and may reduce its financial and military burden, but

²³⁵ Another reason for the disengagement plan is to keep those settlements that Prime Minister Sharon is reluctant to give up, namely the West Bank settlements. "In giving up Gaza, which most Israelis do not want, Mr. Sharon wants to keep as much of the West Bank as he can, with a peace agreement if possible, without if necessary." James Bennet, *Sharon Throws Everyone Off Balance*, N.Y. TIMES, Apr. 18, 2004. § 4 (Week in Review), at 5.

²³⁶ See Barry Rubin, *The Region: Into a New Era*, THE JERUSALEM POST, Apr. 19, 2004, available at <http://www.jpost.com/servlet/Satellite?pagename=JPost/JPArticle/ShowFull&cid=1082345145726&p=1006953079865>.

[T]here will be lots of anarchy, crime, and violence. Some Fatah nationalists will fight Hamas for control; others may align with it. What kind of order, if any, will emerge, and what will be the wider political consequences of that outcome? Will Gaza become a base for heightened attacks on Israel with better weapons and will they be stopped at the border? Supposedly, the lack of an Israeli occupation or settlements will lead to a reduction of tensions, but more likely the area will become a safer haven and base for terrorists, a playground for Hizbullah and al-Qaida as well.

Id.

²³⁷ See Bennet, *supra* note 235 ("In making the case for the Gaza withdrawal, Mr. Sharon argues that it will shield Israel from international blame for the conditions of the 1.3 million Palestinians who live there."). With the recent death of Yasser Arafat, however, Israel has hinted that it may want to negotiate a Gaza withdrawal.

there is no guarantee of security or even peace. Furthermore, it is questionable whether Ariel Sharon will even carry out this plan as members of his own party are against it and the settler movement holds considerable political power in Israel. Nevertheless, the disengagement plan has the potential to be a positive development in the conflict, as it addresses and attempts to solve the intertwining of the populations in Gaza, the resulting tensions, and the stalled peace process.

It has often been said that Israel can be either a Jewish state and democratic, a Jewish state in Israel and the territories, or a democratic state in all of the land. It cannot be a Jewish and democratic state in all of the land. If Israel wants to be a democratic state in all of the land, it must view every citizen equally, whether it is a Jew or an Arab. Yet, this would be undemocratic and unfair to the Palestinians, if that state were to have a Jewish character. But, if Israel ignores their concerns and wants to include the Palestinian territories in the boundaries of its Jewish state, then it would cease to become democratic, and thereby defy the socialist ideals of Zionism. The other alternative for Israel is to have a Jewish and democratic state, but not in all the land, thereby relinquishing its claim to the entire West Bank or Gaza. This option, which is the basis of the two-state solution, recognizes the problems inherent in the demography of the region, namely the mixture and proximity of the populations. In short, Israel can only maintain its Jewish and democratic identity if it separates itself from the territories.

On the Palestinian side, the insistence of the "right of return" to former homes, lands, and towns in Israel is a virtual non-starter in peace negotiations with Israel. The influx of thousands and possibly millions of Palestinians would change the demographic nature of Israel, threatening its character as a Jewish state.²³⁸ Undoubtedly, the result of the right of return would be to

²³⁸ In recognition of this, President Bush rejected the right of return in April 2004. Steven R. Weisman, *Jordanian King Puts Off Meeting Bush Over Israel*, N.Y. TIMES, Apr. 20, 2004, at A1 ("After his meeting with Mr. Sharon a week ago, Mr. Bush broke with American policy and supported Israel's ultimate retention of some settlements in the West Bank and also rejected the longtime

create more integration among the populations. If the only way to decrease the tension is to separate the populations and form two states for two peoples, then the right of return would do just the opposite. It would create a Palestinian state in the West Bank and Gaza and it would change Israel's identity as a Jewish state, once a critical mass of Palestinians moved there. One compromise that has been proposed is for Israel to agree *in principle* to the right of return, compensate Palestinians, and admit a nominal amount of Palestinians to settle in its boundaries.²³⁹ This would serve to recognize the injustice done to the Palestinians, yet would not undermine the concept of a two-state solution and the Jewish character of Israel.

Regardless of the parameters and the specifics of a peace deal, any agreement that is founded on the notion of a two-state solution will recognize the necessity of separating the populations. With the dispute centering on such a small piece of land, both the Israelis and the Palestinians need a space that they can call their own. The Israelis need to feel secure, unthreatened by their neighbors, while the Palestinians need a space free from Israeli intervention in order to realize their goal of independence. Both sides must compromise, with Israel removing some settlements and ending the occupation and the Palestinians recognizing Israel's right to exist, refraining from terrorism, and relinquishing their claim to a "right of return." However, the forces that oppose such a compromise, namely religious extremists, terrorists, and inept leaders, are vocal, powerful and numerous in the region. Compromise can only be realized by overcoming these groups.

Palestinian demand for a right of return to family homes abandoned in 1948 in what is now Israel.").

²³⁹ In the unofficial, nonbinding Geneva Accords, such a compromise was proposed. See *The Geneva Initiative, The Geneva Accords*, available at http://www.heskem.org.il/Heskem_en.asp (last accessed Mar. 29, 2005).

iii. Religious Extremism, Incitement and Terrorism

Religious extremism and terrorism is not just a problem within the context of the Israeli-Palestinian conflict. It is a problem that threatens the stability of the whole Middle East in ways ranging from peace with Israel to the legitimacy of the Arab monarchies. As such, the problem of religious extremism is a major obstacle to the end of terrorism, the Arab world's integration into the 21st century, and improved relations between East and West.

Islamic fundamentalism is a socioeconomic phenomenon with its roots in "unemployment, corruption, disparities in wealth, and brutality of government."²⁴⁰ As Thomas Friedman writes, "[w]hen people in these traditional Arab societies find themselves with scant economic opportunities and traditional mores challenged by a tidal wave of Westernization, they naturally fall back on the political language of protest they know best, which is Islam."²⁴¹ Incapable of directing their anger towards their own oppressive governments, Islamic extremists blame Israel, the United States and the West for their condition. Arab governments, in turn, have encouraged this view as a way to deflect attention from their own corruption and flawed policies and onto their enemy, Israel. However, such extremism is not only a threat to Israel and the West, but to moderate Arab or Islamic countries that want to either democratize, Westernize or make peace.²⁴² Recent al-Qaeda suicide attacks in the moderate, yet predominantly Muslim, state of Turkey²⁴³ and the pro-American Kingdom of

²⁴⁰ FRIEDMAN, *supra* note 216, at 548.

²⁴¹ *Id.*

²⁴² *See id.*

²⁴³ In Istanbul in November 2003, "[t]wo trucks packed with homemade explosives detonated outside the synagogues, killing six Jews and 19 Muslims, including the two bombers." *Turkey Names Suicide Bombers*, CNN, Nov. 19, 2003, available at <http://www.cnn.com/2003/WORLD/meast/11/19/turkey.explosion/>. "The attacks appeared [to be] aimed at disrupting the pro-Western secular axis many people in the Middle East believe the United States and Britain are trying to drive through the region with Iraq war." Craig S.

Saudi Arabia have highlighted this problem.²⁴⁴ The goals of these extremists are to rid the Arab world of Western influence, to destroy Israel and to spread their version of Islam throughout the region.²⁴⁵ Their methods, often manifested as incitement or terrorism, seek to polarize the region into Muslims and non-Muslims, East and West.²⁴⁶ Islamic fundamentalism's real danger is in this dual threat to both the West (Israel, Europe and the United States) and the moderate Arab and Islamic regimes.

Religious extremism in the Middle East has resulted in a widespread view that coexistence with Israel is impossible and only terrorism and a war of attrition can make Israel relent. Iranian and Syrian-backed terrorist group Hezbollah, (or "Army of God" in English) fully engages in such a propaganda war with its Lebanese-based television station Al Manar. The station, which has been heavily criticized by the United States, Europe and Israel, produces the following television shows:

The program "Terrorists" . . . plays endless loops of film from Israeli attacks that killed civilians. "Sincere

Smith, *A Region Inflamed: Terrorism; In the Balance: Attacks on Turkey Try to Sever a Bridge Between Islam and West*, N.Y. TIMES, Nov. 21, 2003, at A10.

²⁴⁴ See Neil MacFarquhar, *Four Killed and 148 Wounded in Suicide Bombing in Riyadh*, N.Y. TIMES, Apr. 22, 2004, at A1; see also Neil MacFarquhar, *Police Building in Saudi Capital is Wrecked by Car Bomb*, N.Y. TIMES, Apr. 21, 2004, at A1.

²⁴⁵ With the case of the Turkey bombings, the goals of such extremists were present: (1) Turkey, as the only Muslim member of NATO, as an applicant to the European Union, and as a military and economic friend of Israel, was seen by the terrorists as too close to the West; (2) the terrorists wanted to make the EU wary of admitting Turkey, thereby driving a wedge between the two; (3) the terrorists chose to attack synagogues, which was in effect, an attack on the Jewish people and hence, the Jewish state; and (4) the growing generation of disenfranchised youth in Turkey have turned towards conservative Islam, thereby threatening the moderate and secular country of Turkey. See Smith, *supra* note 243.

²⁴⁶ See *id.*

Men,” drawing its name from a Koranic verse about the strength of the faithful when facing battle, profiles either Hezbollah fighters who undertook suicide missions or those in waiting. “The Mission” follows a standard game show format... One senior United States official in the region . . . grumble[d] about “The Mission” as encouraging violence, calling it “Name Your Favorite Terrorist.”²⁴⁷

Throughout the Arab world, the media portrays Jews negatively, whether it is in school textbooks, magazines, or newspapers. Recently, Abu Dhabi Television used the blood libel to portray Ariel Sharon as drinking the blood of Arabs,²⁴⁸ while Egyptian television aired a 30-part series, *Horseman without a Horse*, based on the Protocols of the Elders of Zion, a forged document purporting to prove a Jewish plan to control the world.²⁴⁹ Such anti-Semitic and anti-Israel propaganda serves only to embitter the Arab world and place both Israel and the Jewish people as enemies of Islam. This propaganda and incitement endangers any prospects for peace and must be dealt with by the Arab world if there is to be any reconciliation with Israel and the Jewish people.

Too often, the result of propaganda and religious extremism is terrorism. While Islamic terrorism has many roots (e.g., socioeconomics, culture, Westernization, Israeli occupation), religious extremism may be its strongest cause. Terror organizations, such as Hamas, Hezbollah, and al-Qaeda, use religion as a recruiting tool, as motivation for their attacks and as an excuse for their legitimacy. In doing so, they hurt both the victims of their attacks and Islam in general, for they are acting in

²⁴⁷ Neil MacFarquhar, *On Gameshow, Arab Drumbeat: Remember Jerusalem*, N.Y. TIMES, April 19, 2004, at A3.

²⁴⁸ Press Release, Anti-Defamation League, ADL Outraged at Anti-Semitic Blood Libel Skits on Arab Television, (Nov. 19, 2001), available at http://www.adl.org/presrele/AsInt_13/3964_13.asp (last accessed Mar. 26, 2005).

²⁴⁹ See *Egypt Criticized for Anti-Semitic Film*, BBC NEWS, Nov. 1, 2002, available at http://news.bbc.co.uk/1/hi/world/middle_east/2386767.stm (last accessed Mar. 26, 2005).

Islam's name. In contrast to some groups which used terror attacks for political goals, fundamentalists use such attacks to achieve religious goals as well. Because of their unflinching and unwavering devotion to their religion and their consequent commitment to destroy Israel, compromise is impossible with fundamentalists and therefore, they pose a severe threat to the peace process. With one bombing, a terrorist can destroy negotiations and throw the region into a tailspin. It is this power in the hands of a few terrorists that poses the greatest threat to peace in the Middle East.

The power to destroy the peace process has been wielded by Jewish extremists as well. Yigal Amir's murder of Israeli Prime Minister Yitzhak Rabin²⁵⁰ and Baruch Goldstein's massacre of thirty Palestinians at a Hebron mosque²⁵¹ highlight the threat that

²⁵⁰ See AMNON RUBINSTEIN, FROM HERZL TO RABIN: THE CHANGING FACE OF ZIONISM 147-50 (2000) (explaining the influence that a rabbinical decision had on Yigal Amir's assassination of Prime Minister Rabin).

²⁵¹ See FRIEDMAN, *supra* note 216, at 559.

Why did Baruch Goldstein, the fanatical Jewish settler from Qiryat Arba, walk into Hebron's Cave of the Patriarchs on the afternoon of February 24, 1994, and gun down Muslim worshippers there, killing thirty of them and wounding scores of others? I think it is because he had been listening to the silence with which most Israelis had accepted the peace accord with Arafat and it drove him crazy. Baruch Goldstein...understood that the only way to break the silence was not with some garden-variety act of terrorism...No, it required something so outrageous, so unspeakable, that it would move masses of Palestinians to react, which he hoped would trigger a massive Israeli counter-reaction and suddenly the silent majorities, instead of being passive and inert, would be mobilized, angry, and at each other's throats. So he shot up one of the holiest sites of Islam.

Id.; see also RUBINSTEIN, *supra* note 250, at 136.

The settlement elite, the heads of the National Religious Party, and the chief rabbis condemned the massacre. But immediately following the slaughter, the voices of extremist rabbis who praised the murderer and justified the murder, either explicitly or implicitly, could be heard. Although the heads of the religious

extreme Jewish fundamentalism poses to peace in the Middle East. But, the major differences between these incidents and Palestinian attacks are (1) that they were relatively isolated and not part of a campaign of violence and (2) that there is little support in Israel for them, as, in general, the Israeli government and the Israeli people oppose the use of such tactics.²⁵² Nevertheless, incitement on the part of some Jewish settlers and fundamentalists still exists. The forces that killed Yitzhak Rabin may present themselves again if a peace process ever develops. Hence, incitement among Jewish extremists must be curtailed as well, to proactively stop another attack that may further poison the atmosphere and derail any hope for peace.

While Israel has the power to stop Jewish extremism within its borders, Islamic fundamentalism will always be a challenge for Israel as it cannot solve the socioeconomic problems of the Arab world.²⁵³ Prior to a peace agreement, the negotiating parties will inevitably have to deal with both Islamic and Jewish religious extremists who seek to derail negotiations and reverse the peace process. However, a deal with the Palestinians and with Israel's Arab neighbors may help quell the socioeconomic problems of the Arab world that give rise to fundamentalism.²⁵⁴ A peace agreement may "give the Arabs a stronger hand to deal with some of their economic problems, reduce the ability of the fundamentalists to blame every blight in their society on Israel, and [perhaps] secure a Muslim majority ready to live and let live with

establishment denounced Goldstein's actions, they did not express any reservations about their colleagues who justified them.

Id.

²⁵² However, the religious Zionist community in Israel did not denounce the tactics of Jewish extremists in a meaningful way. For example, Baruch Goldstein's grave was turned into a "semi-shrine, the site of pilgrimages." See RUBINSTEIN, *supra* note 250, at 138. Nevertheless, the Israeli government and the Israeli police have arrested numerous extremists for incitement and plotting to attack Arabs and the secular/moderate Israeli majority has opposed the Jewish extremists. See *id.* at 130-56.

²⁵³ See FRIEDMAN, *supra* note 216, at 549.

²⁵⁴ See *id.*

the Jews.”²⁵⁵ Moreover, peace with Israel has direct economic benefits for the Arab world, as evidenced by Egypt’s receipt of billions in foreign aid after its peace agreement with Israel and the forgiving of \$700 million of Jordanian debt after it signed its treaty with Israel.²⁵⁶ Decreased military expenditures in a time of peace would make room for investment in infrastructure and education, thereby strengthening the economy of any nation that made peace. Furthermore, the stability itself would also bring in a new wave of foreign investment. If Arab economies can grow after a peace agreement, Islamic fundamentalism will become less alluring and the threat of terrorism can be minimized. This, in turn, will strengthen and reinforce peace in the region.

iv. Failed Leadership

It must be remembered that Israelis view any Arab peace overture in the context of Anwar Sadat’s initiative. Israelis saw Sadat address their own parliament; they saw him salute the Israeli flag; they saw him kiss former Israeli Prime Minister Golda Meir on the cheek and visit the Israeli Holocaust memorial at Yad Vashem. What he did was so far-reaching, so clear-cut in its recognition of Israelis, that no one could challenge his sincerity. At the same time, Sadat, by going to Jerusalem, did something so courageous that Israelis could not help but take notice. He put himself in a position where he could not afford to fail.²⁵⁷

Perhaps the largest obstacle to Middle East peace is the flawed and at times, impotent, leadership of the region. Currently, there are no

²⁵⁵ *Id.*

²⁵⁶ *See id.* at 557. Similarly, only months after the Oslo agreements, global investment companies scouted both the Gaza Strip and Israel. *See id.* at 553.

²⁵⁷ FRIEDMAN, *supra* note 216, at 404.

leaders like Anwar Sadat or Yitzhak Rabin that can command the international respect, and possess the courage and foresight necessary for compromise. Instead, the region is filled with despotic regimes who only want to consolidate their power and leaders who are either unwilling or unable to even negotiate for peace.

To many Israelis, Yasser Arafat's rejection of former Prime Minister Ehud Barak's peace proposal at Camp David in 2000 signified his unwillingness to compromise, his fear of his own people, and his inability to act decisively at a crucial moment. In the eyes of Israelis, Arafat's failure to offer a counterproposal showed that he truly did not want peace.²⁵⁸ Furthermore, Arafat's incitement and continued support of terrorism during the second *Intifada* reinforced their skepticism of his true intents.²⁵⁹ In recognition of his inability to deliver and his continued support for

²⁵⁸ See Thomas L. Friedman, *Foreign Affairs: Three Blind Eyes*, N.Y. TIMES, Jan. 2, 2001, at A15.

What Mr. Arafat never did was talk to Israelis – go to them directly, explain why he needed 100 percent, and demonstrate to them why, if they accepted, Israel would be so much better off. Oh, that's not Yasir Arafat, say his apologists. He's not Anwar el-Sadat. Too bad. Mr. Sadat got 100 percent for a reason. Why should Israelis now believe that if they give Mr. Arafat a state in the West Bank, when he gets in trouble next time, say because he can't run a modern country, he won't trigger another uprising against Israel

Id.

²⁵⁹ See Benjamin Netanyahu, *Israel's Vote for a Safe Place*, N.Y. TIMES, Feb. 7, 2001, at A19.

For years, Yasir Arafat has spoken out of both sides of his mouth. Paying lip service to the peace of the brave in front of Western audiences, Mr. Arafat has used his state-controlled news media to foment hatred against Jews and call for the destruction of Israel. While leaders like Anwar Sadat of Egypt and King Hussein of Jordan sought to prepare their peoples to live in peace with Israel, Mr. Arafat chooses instead to praise suicide bombers as national martyrs and preach a holy war to end the occupation of Palestine in spite of the fact that nearly 99 percent of Palestinians no longer live under Israeli rule but are under his own despotic regime.

Id.

terrorism, Israel and the United States sidelined Arafat from 2002 to 2004, refusing to negotiate with him. Following Arafat's death in November 2004, the new Palestinian leader, Mahmoud Abbas, has taken some measures to improve relations with Israel, but it remains to be seen whether he has enough legitimacy among his own people to be empowered to fight terrorism and ultimately make peace.

On the Israeli side, because he believes there is no Palestinian partner for peace, Prime Minister Sharon has moved away from compromise and negotiation and toward unilateral actions, such as the Gaza disengagement plan and the security fence. Palestinians are skeptical about his motives, especially since the security fence encompasses some Palestinian lands, divides some Palestinian towns, and may become a *de facto* border that does not coincide with the "Green Line."²⁶⁰ Similarly, Palestinians are wary of Sharon's motives, as he was architect of the settlement movement and was defense minister during the Sabra and Shatilla incident.²⁶¹ While Ariel Sharon's history of fighting for Israel and fighting against terrorism may provide him with the political cover to negotiate with the Palestinians, his

²⁶⁰ See *supra* notes 232-33 and accompanying text.

²⁶¹ During the Israel-Lebanon War, Lebanese Phalangists massacred hundreds of Palestinians at the Sabra and Shatilla refugee camps in retaliation for their leader's death and due to past tribal killings of their own. Israeli soldiers, which were surrounding the camps, did not intervene to stop the Phalangists, even though there is evidence that they knew what was going on. Ariel Sharon, Israel's Minister of Defense at the time, was found to be "indirectly responsible" for the death of the Palestinian refugees. FRIEDMAN, *supra* note 216, at 159-67 (discussing the details of the Sabra and Shatilla massacre); see also ARIEL SHARON, WARRIOR 493-522 (1989) (In explaining the Kahan Commission's findings over what occurred at the Sabra and Shatilla refugee camps, Sharon states, "[R]egardless of the fact that so many people had known of the Phalangists entering the neighborhoods without anticipating a massacre, I, as defense minister, should have been more aware of the dangers and should have taken action to preclude them. As a result, according to the commission, I personally bore an 'indirect responsibility' for what happened.").

reputation as a “hard-liner” may push Arabs away.

The leadership among the Arab world has been flawed as well. Arab leaders have not prepared their citizens for peace with Israel and instead continue to incite and blame their own domestic problems on Israel:

In Israel, virtually every party favors a peace deal with the Palestinians, and the debate is over how much to compromise. In the Arab world, the debate is over whether to compromise – with one group rejecting peace with Israel on any terms, and others advocating peace with Israel; but only if the Palestinians get 100 percent of what they want. So no Arab or Palestinian leader has prepared his people for the Clinton deal, the only deal that is possible – a deal in which neither gets 100 percent. Too many Arab regimes today are frail and illegitimate, and cannot settle for anything less than 100 percent. They are too afraid of their own people.

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Because the Arab world has not democratized and is ruled by leaders who just barely cling to power,²⁶³ any overture towards Israel that is against popular opinion will lead to resentment and may lead to their removal from power. Hence, Arab governments continue policies of opposing Israel, as a way to placate their citizens and redirect anger away from their own authoritarian regimes. This attitude must change in order for there to be Middle East peace. Arab leaders must prepare their citizens for coexistence with Israel and must teach them not to hate Jews or

²⁶² Friedman, *supra* note 258.

²⁶³ However, new democratic movements have arisen in the Middle East. Elections in Iraq and the Palestinian territories, Egypt's decision to hold multi-candidate presidential elections in September 2005, and demonstrations in Lebanon against the Syrian occupation have brought some promise for democracy in the Middle East. Nevertheless, it remains to be seen whether any of these events will actually lead to full scale democratization or whether they are just isolated occurrences. See Thomas L. Friedman, *New Signs on the Arab Street*, N.Y. TIMES, Mar. 13, 2005, at A11.

Israelis. The Arab governments should reject television programs, like *Horseman without a Horse* and those that Hezbollah airs, as they are counterproductive to peace. In short, Arab governments must now lay the groundwork for an eventual peace by removing the threats, incitement, and hatred that lies within the region.

Finally, President George W. Bush has failed to take a leadership role in the Middle East conflict. Whereas his predecessor, President Bill Clinton, was constantly engaged in peace negotiations, President Bush has not demonstrated the same willingness. President Bush sidelined Yasser Arafat, demanding democratization and reforms within the Palestinian authority. While this may have had its benefits, as Arafat was either unwilling or unable to make peace or negotiate with the Israelis, President Bush has not been sufficiently active in demanding that the parties negotiate or try to solve the conflict. President Bush should have demanded (and expected) more from the parties, such as putting an end to settlement growth and an end to suicide bombings and incitement. Instead of sending Middle East envoys, President Bush could have traveled more often to the region to deal with the issue. President Bush should have also used his considerable power as the leader of the wealthiest and strongest nation to cajole, coerce, or compel the parties to follow his "Road Map" to peace. At the very least, such efforts would have gained Bush credibility as someone who cares about ending the conflict. If the parties ever decide to negotiate, the credibility of the president is necessary to effectively mediate the dispute. However, the way it stands now, President Bush has little credibility in the region and his unwillingness to become more engaged is detrimental to peace.

C. Likelihood of an Arab-Israeli Peace

With the current political backdrop, peace seems unlikely in the Middle East. Even if Israel carries through with its disengagement plan and security (separation) barrier, quiet is not assured. Such plans manage the situation and may reduce tension and violence, but they do not result in peace. Arafat's rejection of Barak's offer and the ongoing Palestinian Intifada, have both silenced the now-jaded peace movement in Israel. Palestinian society remains fragmented and volatile – Yasser Arafat is dead, the Palestinian Authority is in shambles, and no one seems able or willing to control the terrorist organizations. The Intifada continues, the Israeli occupation remains, and both Israelis and Palestinians have seemingly accepted the continuation of the conflict.

Tensions in the region since the Intifada, the terrorist attacks of 9/11 and the war in Iraq have further polarized the world. The United States is increasingly viewed in the Arab world as an enemy of Islam and as biased towards Israel. Arab governments are seen by the Americans and Israelis as reluctant to stop terrorism, as havens for terrorists and their supporters, and as contributing to anti-American, anti-Israeli feelings. The European Union and the United Nations are viewed by Israel as being too quick to condemn Israeli actions to stop terrorism, but too unwilling to condemn the terrorists themselves. France and Germany have criticized the United States for being too uninvolved with the Israeli-Palestinian conflict and too eager to go to war with Iraq. There seems to be little consensus over how to solve the problems of the region and it seems like the parties to the conflict are farther than ever from peace. Whereas the early to mid-1990s were a time of hope, with the Oslo accords and the Israeli-Jordanian peace agreement, the last several years have witnessed the Intifada, 9/11, the war in Afghanistan, the war in Iraq, and terrorist attacks around the world. Hope has been replaced by the hard reality that peace is currently nowhere in sight.

There will not be a comprehensive Middle East peace in the foreseeable future. Perhaps peace will be possible in ten or twenty years, but the situation has gotten worse in the last few years, rather than better. While actions like Libya's nuclear disarmament and Israel's withdrawal from Gaza are encouraging for the region, there are still too many problems to be fixed. Iraqi reconstruction, Iran's nuclear program, the weaknesses of Arab governments, terrorism, Hezbollah's activity in southern Lebanon and the Israeli-Palestinian conflict will all contribute to the instability of the region over the next decade. As such, it is increasingly doubtful that the Israelis and the Palestinians and Israel and the Arab world will agree to peace. Because the best hope for reparations for Jewish refugees is with a claims commission, and since such an entity is conditioned upon a regional peace agreement, it is doubtful that the Jewish refugees will ever be compensated for their expulsion from the Arab world.

Section IV: Conclusion

The likelihood of compensation for the Jewish refugees is slim, as Middle East peace is years away and no remedy other than a claims commission would effectively redress the Jewish refugees. Nevertheless, public acknowledgment of the wrongs that they suffered may assure at least a minimum level of justice, where there was none before. The history of Middle Eastern Jewry has long been ignored. As Israeli Ambassador to the United Nations Dan Gillerman observed:

Since 1947, there have been over 681 UN resolutions on the Middle East conflict, including 101 that refer directly to the plight of Palestinian refugees. Not one of these resolutions even mentions the plight of Jewish refugees, let alone calls for action to address their

suffering.²⁶⁴

The politics of the day have emphasized the Palestinian plight, to the exclusion of what happened to the 850,000 Jews that once lived in Arab countries. Both groups have legitimate claims, yet only one has received attention. Peace may happen one day in the Middle East. Palestinian refugees may get compensation. Yet, without a proper discussion of the Jews from the Arab world, there can be no *just* settlement of the refugee situation in the Middle East.

Many refugees are still alive, yet the population dwindles with time. With the state of the Middle East today, it is unlikely that any will receive compensation or even an apology for the abuses that they suffered. Nevertheless, it is the world community's responsibility to refocus the debate, so that the issue becomes whether there will be justice for the refugees and not whether one claim is superior or subordinate to another. The Jewish refugees have legitimate claims that have yet to be heard. Hopefully, the world will not forget them again.

²⁶⁴ Israel Ministry of Foreign Affairs, *Statement by Ambassador Dan Gillerman*, *supra* note 85.